STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1627

State of Minnesota,
Respondent,

vs.

Lawrence Peter Hanson,
Appellant.

Filed April 26, 2011
Affirmed
Connolly, Judge

Anoka County District Court
File No. 02-CR-09-10703

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

Anthony C. Palumbo, Anoka County Attorney, Catherine McPherson, Assistant County Attorney, Anoka, Minnesota (for respondent)

Paul D. Baertschi, Tallen & Baertschi, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, 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

CONNOLLY, Judge

Appellant challenges his convictions of misdemeanor indecent exposure and felony fifth-degree possession of a controlled substance, asserting that the district court erred by declining to suppress evidence because his arrest was unlawful. Because we conclude there was no error, we affirm.

FACTS

On June 16, 2009, a Fridley police officer arrested appellant Lawrence Peter Hanson in the city's Riverfront Park. The arrest occurred after the officer responded to a dispatch call from a woman who said she saw a naked man masturbating while sitting in a blue Saturn sedan located in the park. The officer found the car in the park with no one inside. The car's license plate number matched the number the woman provided police. The officer called the woman who reported the incident. She gave the officer a physical description of the man, who she said was completely naked in a car fondling his penis. The woman told the officer that the man pulled a camouflage jacket over his genitals when he saw the woman.

The officer searched a computer database and determined that Hanson was the car's registered owner. The officer also located a driver's license photograph of Hanson. The physical description the woman gave the officer matched Hanson's photograph.

The officer next searched the park and found Hanson sitting on a park bench. Hanson wore a camouflage jacket and a jean jacket, but his legs were bare. He was not

wearing pants, and the officer did not see pants nearby. The camouflage jacket extended slightly below Hanson's waist.

The officer asked Hanson his name and Hanson identified himself. Hanson denied masturbating and said he was simply changing clothes. Next, the officer asked Hanson to stand up. The officer saw the lower half of Hanson's bare buttocks. The officer then lifted up Hanson's jacket and saw that Hanson was wearing nothing below his waist except a "see through type fishnet type G string." Hanson's genitals were exposed. The officer handcuffed Hanson and arrested him on suspicion of indecent exposure. He searched Hanson and found a clear pipe and a small bag of white powder. Laboratory testing revealed the powder to be methamphetamine.

In September 2009, Hanson was charged in Anoka County on two counts: felony fifth-degree possession of a controlled substance in violation of Minn. Stat. §§ 152.025, subd. 2(1) (2008) and 152.025, subd. 3(a) (2008); and misdemeanor indecent exposure in violation of Minn. Stat. § 617.23 (2008). In December 2009, Hanson filed a motion to suppress evidence of the pipe and methamphetamine on grounds that the officer had unlawfully arrested him. The district court denied Hanson's motion, concluding that the officer had lawfully arrested Hanson and the search incident to his arrest was reasonable. In May 2010, Hanson filed a request for reconsideration of the district court's denial of his motion to suppress. The district court denied the motion.

In June 2010, the district court held a trial on stipulated facts and found Hanson guilty of both charges. In September 2010, Hanson received a stay of imposition on the drug conviction and was placed on five years' supervised probation. He also was

sentenced to 90 days in the Anoka County Jail, with 82 days stayed for one year, and one year of unsupervised probation for the indecent exposure conviction. Hanson filed this appeal.

D E C I S I O N

Hanson argues that the district court erred by finding that the police lawfully arrested him. We review factual findings in a district court's order denying a motion to suppress under a clearly erroneous standard of review. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). But where factual findings are not disputed, this court reviews a district court's suppression determination under a de novo standard of review. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). Hanson does not dispute the facts of this case. He makes two arguments as to why the district court erred by finding that the police lawfully placed him under arrest.

I. The district court did not err by concluding that Hanson's arrest did not violate Minn. Stat. § 629.34, subd. 1(c).

Hanson argues first that the district court erred by finding that he was lawfully arrested because his arrest violated Minn. Stat. § 629.34, subd. 1(c) (2008). Section 629.34 outlines conditions under which a police officer may make an arrest without a warrant. *See* Minn. Stat. § 629.34. Subdivision 1(c) states that an officer may make an arrest without a warrant "when a public offense has been committed or attempted in the officer's presence." *Id.*, subd. 1(c). Two elements must be established to conclude that an offense has been committed within an officer's presence: "(1) He must become aware of the acts as a result of his sensory perception, and (2) he must infer that the acts

constitute an offense." *Smith v. Hubbard*, 253 Minn. 215, 221, 91 N.W.2d 756, 762 (1958). "The purpose of the presence requirement is to prevent warrantless misdemeanor arrests based on information from third parties." *State v. Jensen*, 351 N.W.2d 29, 32 (Minn. App. 1984). An officer "may not act on his own appraisal of the reasonableness of the information" provided by a third party. *Id.* (quotation omitted). Evidence seized during a search incident to arrest that violates Minn. Stat. § 629.34, subd. 1(c), must be suppressed. *See State v. Martin*, 253 N.W.2d 404, 406 (Minn. 1977); *State v. McDonnell*, 353 N.W.2d 678, 680 (Minn. App. 1984).

In the order denying Hanson's motion to suppress, the district court stated that the officer had a reasonable basis to believe that arresting Hanson was necessary to prevent him from committing further criminal conduct. The district court concluded that the officer had a reasonable basis for the arrest because Hanson matched the physical description the woman provided and because the officer observed that Hanson appeared to be naked below the waist. When the officer asked Hanson to stand up from the park bench, the officer confirmed the indecent act and saw the indecent exposure himself and, therefore, the district court concluded, Hanson's arrest did not violate Minn. Stat. § 629.34, subd. 1(c).

Hanson argues that his arrest was unlawful and violated Minn. Stat. § 629.34, subd. 1(c), because he did not commit indecent exposure in the officer's presence. He asserts that only a portion of his legs were exposed when the officer approached him in the park. Hanson contends that the officer "deliberately exposed" him, and that he

"cannot be held responsible for indecent exposure when the exposure was committed by the officer in telling [him] to stand up and in lifting [his] jacket."

We agree with the district court that Hanson committed indecent exposure in the officer's presence. Accordingly, his arrest did not violate Minn. Stat. § 629.34, subd. 1(c). Both elements of the "officer's presence" under *Hubbard* were established here. First, the officer saw that the lower half of Hanson's buttocks were visible when he stood up from the park bench. *See Hubbard*, 253 Minn. at 221, 91 N.W.2d at 762 (officer must become aware of acts through "sensory perception"). Second, the officer inferred that Hanson committed indecent exposure by exposing his buttocks and genitals in the park when the officer handcuffed and arrested Hanson. *See id.* (officer must infer that acts break a law).

Hanson's argument that the officer forced him to commit indecent exposure is not persuasive. He appears to argue that the officer unreasonably seized him merely by asking him questions, and that the officer compelled him to stand up. "[A] person has been seized if 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) (citation omitted). But not every contact between a police officer and a citizen amounts to a seizure. *In re E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993). "A person generally is not seized merely because a police officer approaches him in a public place or in a parked car and begins to ask questions." *Harris*, 590 N.W.2d at 98. "Moreover, seizure does not result when a person, due to some 'moral or instinctive

pressure to cooperate,' complies with a request to search because the other person to the encounter is a police officer. *Id.* at 99.

In this case, the officer approached Hanson in a public park and began to ask him questions. The officer asked Hanson to stand up from a bench. Hanson complied by standing up, which exposed his bare buttocks. Under *Harris*, nothing in the record indicates that Hanson was subject to an unlawful or unreasonable seizure.

Hanson cites two cases to argue that we must narrowly construe the phrase "officer's presence," and conclude that he did not commit indecent exposure in the officer's presence. The first case, *McDonnell*, is factually distinguishable from this case. 353 N.W.2d 678. In *McDonnell*, this court concluded that police illegally arrested a woman for driving while intoxicated because she had not committed the offense in an officer's presence. *Id.* at 681. In contrast, the record in this case indicates that Hanson committed indecent exposure in the officer's presence when Hanson stood up from the bench and the officer saw his buttocks. The second case Hanson cites is an unpublished decision of this court, which we decline to address because it is not binding precedent. *See* Minn. Stat. § 480A.08, subd. 3(c) (2010); *Vlahos v. R & I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 676 n.3 (Minn. 2004).

In sum, the district court correctly concluded that Hanson's arrest did not violate Minn. Stat. § 629.34, subd. 1(c).

II. The district court did not err by concluding that Hanson's arrest did not violate Minn. R. Crim. P. 6.01, subd. 1.

Hanson argues next that the district court erred by finding that he was lawfully arrested because his arrest violated Minn. R. Crim. P. 6.01, subd. 1. Rule 6.01, subdivision 1, states that in misdemeanor cases

> peace officers who decide to proceed with prosecution and who act without a warrant must issue a citation and release the defendant unless it reasonably appears:
>
> (1) the person must be detained to prevent bodily injury to that person or another;
> (2) further criminal conduct will occur; or
> (3) a substantial likelihood exists that the person will not respond to the citation.

Minn. R. Crim. P. 6.01, subd. 1. In rejecting Hanson's argument, the district court stated that the officer had a reasonable basis to believe that arresting Hanson was necessary to prevent him from committing further criminal conduct. Hanson contends that the officer should have escorted him to his car and issued a citation for indecent exposure instead of arresting him. The state argues that the officer properly arrested Hanson under rule 6.01, subd. 1(a)(2), because Hanson would commit the further criminal conduct of indecent exposure when he stood up from the park bench and walked to his car to leave the park because his buttocks and genitals would be exposed.

We agree with the state's argument that the officer properly arrested Hanson to prevent further criminal conduct. The record supports that when Hanson stood up from the bench a portion of his buttocks was exposed. Further, Hanson's car was located in the park. Therefore, when Hanson would have chosen to leave the park, he would have

stood up from the bench and walked to his car. These actions would have exposed his buttocks and would constitute further criminal conduct under the indecent exposure statute because Hanson would be "willfully" exposing his buttocks in a "public place," the park. Minn. Stat. § 617.23, subd. 1 (2008). Therefore, the district court did not err by concluding that Hanson's arrest did not violate rule 6.01, subd. 1.

Hanson cites three cases to support his argument that his arrest violated rule 6.01, subd. 1, but none are applicable here. *State v. Varnado* and *In re Welfare of T.L.S.* both involve a warrantless misdemeanor arrest, but neither case addresses the circumstances under which an officer may properly arrest a person to prevent further criminal conduct. 582 N.W.2d 886 (Minn. 1998); 713 N.W.2d 877 (Minn. App. 2006). Hanson also cites an unpublished decision of this court, but, again, we decline to address the case because it is not precedential. *See* Minn. Stat. § 480A.08, subd. 3(c); *Vlahos*, 676 N.W.2d at 676 n.3.

Affirmed.