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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2169

State of Minnesota,
Respondent,

vs.

Michael Anthony Clark,
Appellant.

Filed November 28, 2011
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27CR0945530

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Larkin, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal from his conviction of prohibited person in possession of a firearm, appellant argues that the district court erred by denying his motion to suppress because he

was unlawfully seized when the police officer shined her squad car spotlight on appellant and his brother as they walked down the street. Because the officer's conduct does not constitute a seizure, we affirm.

FACTS

Appellant Michael Anthony Clark was charged with prohibited person in possession of a firearm in violation of Minn. Stat. §§ 624.713, subd. 1(b), 609.11 (2008). Appellant subsequently moved to suppress the handgun on the basis that the evidence was the fruit of an unlawful seizure. At the suppression hearing, Officer Ann Hedberg testified that on February 12, 2009, she was on patrol in Minneapolis when she was approached by an individual who "yelled" that there were two African-American men "with shotguns" running from a house and heading north. Approximately two minutes later, Officer Hedberg noticed two African-American men walking near the entrance of an alley about a block from where she had been notified of the males carrying shotguns. Officer Hedberg activated the squad spotlight and shined it on them. The two men took off running and were apprehended shortly thereafter. During the chase, appellant dropped a 9mm handgun.

The district court found that "shining a spotlight, absent any other police action, does not in and of itself constitute a seizure." Thus, the court denied the motion to suppress. A jury found appellant guilty of the charged offense and appellant was sentenced to the commissioner of corrections for 60 months. This appeal follows.

D E C I S I O N

Appellant argues that the district court erroneously denied his motion to suppress the evidence because his encounter with the shining of the squad car's spotlight was an unconstitutional seizure that is unsupported by a reasonable, articulable suspicion of criminal activity. When reviewing a pretrial order denying a motion to suppress evidence, this court reviews the facts for clear error and determines as a matter of law whether the evidence must be suppressed. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). When the facts are not in dispute, the reviewing court determines whether the police officer's actions constitute a seizure and, if so, whether the officer articulated an adequate basis for the seizure. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

The Fourth Amendment to the United States Constitution and Article I, Section 10, of the Minnesota Constitution protect against unreasonable searches and seizures. A seizure occurs when an officer, "by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995) (quotation omitted). A person has been seized when, under the totality of the circumstances, a reasonable person would believe that, because of the conduct of the police, "he or she was neither free to disregard the police questions nor free to terminate the encounter." *Id.* If a seizure has occurred, "the police must be able to articulate reasonable suspicion justifying the seizure." *In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993). Reasonable, articulable suspicion must be present at the moment a person is seized. *Terry v. Ohio*, 392 U.S. 1, 21–22, 88 S. Ct. 1868, 1880 (1968); *see also Cripps*, 533 N.W.2d at 391.

Appellant argues that the district court erred by concluding that the officer's use of her spotlight did not constitute a seizure because a reasonable person would not feel free to leave. But it is well settled in this state that the use of a police spotlight alone is not a show of police authority and does not constitute a seizure. *See, e.g.*, *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980) (concluding that no seizure occurred when officer approached vehicle and shined flashlight into passenger compartment after observing driver shut lights off, drive into closed service station, and stop); *Crawford v. Comm'r of Pub. Safety*, 441 N.W.2d 837, 838–39 (Minn. App. 1989) (concluding that no seizure occurred when officer followed vehicle into residential cul-de-sac and activated spotlight to locate parked vehicle).

Here, the facts are undisputed. Officer Hedberg received a credible tip that two African Americans were observed fleeing a house in the neighborhood carrying shotguns. In the course of investigating the tip, the officer noticed two African Americans walking down the street in close proximity to where the fleeing individuals were last observed. Because it was dark, the officer used her squad car's spotlight to observe the individuals. Other than the use of the spotlight, no intrusive police conduct is alleged. Officer Hedberg's use of the spotlight in these circumstances was not a display of authority sufficient to communicate to appellant that he was not free to terminate the encounter by leaving. Therefore, the district court did not err by concluding that the officer's use of her spotlight, standing alone, did not constitute a seizure.

Affirmed.