STATE OF MINNESOTA
IN COURT OF APPEALS
A10-318

State of Minnesota,
Respondent,

vs.

Prince Lashone Holt,
Appellant.

Filed May 16, 2011
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-09-34504

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

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

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

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and Worke, Judge.

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

WORKE, Judge

Appellant challenges his controlled-substance-crime conviction, arguing that the district court erred in not suppressing drugs discovered during an unconstitutional seizure

that the officer then unlawfully expanded by ordering appellant to open his hand. We affirm.

D E C I S I O N

Investigative Stop

Following a stipulated-facts proceeding, the district court denied appellant Prince Lashone Holt's suppression motion and found him guilty of fifth-degree possession of cocaine. This court reviews the district court's findings on a suppression motion for clear error and its determination of whether to suppress the evidence de novo. *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997).

Appellant argues that the stop and seizure were unconstitutional because the officer who approached him and two other men standing in a circle on a street corner did not have a reasonable suspicion of criminal activity when he ordered appellant to put his hands on the officer's squad. A person has been "seized" when, in view of all surrounding circumstances, a reasonable person would have believed that he was not free to leave. *In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993). We have determined that an individual has been seized when ordered out of a vehicle and instructed to raise his hands. *State v. Wiggins*, 788 N.W.2d 509, 513 (Minn. App. 2010), *review denied* (Minn. Nov. 23, 2010). A reasonable person would not feel free to leave after an officer approaches and instructs him to place his hands on the officer's squad; thus, appellant was seized at this point, and we must now determine whether the seizure was lawful.

The warrantless search and seizure of an individual is per se unreasonable under the United States and Minnesota Constitutions. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But an officer is permitted to make a limited investigative stop if he has "a reasonable, articulable suspicion that [the] suspect might be engaged in criminal activity." *State v. Flowers*, 734 N.W.2d 239, 250 (Minn. 2007) (quotation omitted); *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968). A reasonable articulable suspicion is less than probable cause. *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003). An officer must be able to demonstrate that the decision to stop a person was not "the product of mere whim, caprice, or idle curiosity." *Id.* (quotation omitted). In reviewing whether a stop was supported by reasonable suspicion, this court considers the totality of the circumstances surrounding the stop, including the officer's training and experience. *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983); *see State v. Harris*, 590 N.W.2d 90, 99 (Minn. 1999) (stating that an officer "may draw inferences and deductions that might elude an untrained person").

The officer deduced that appellant was involved in a narcotics transaction based on the following: (1) the officer recently received complaints of narcotics trafficking in the area where appellant was standing in a circle with two other men; (2) the officer observed appellant appearing to be passing something to one of the men; (3) the group straightened up and faced the officer when he approached; (4) the officer saw a white tissue in appellant's hand; and (5) the officer observed one of the other men throw something, which the officer believed was contraband. The district court concluded that

the totality of these circumstances, combined with the officer's training and experience, supported reasonable suspicion that the men were involved in illegal activity.

The totality of the circumstances can include lawful conduct, such as being in a high-crime area. *State v. Uber*, 604 N.W.2d 799, 801 (Minn. App. 1999); *see also State v. Britton*, 604 N.W.2d 84, 89 (Minn. 2000). But "[m]erely watching the police to avoid some minor misstep . . . , appearing nervous or looking away from a police car, or quickening one's pace on seeing a police car are not unusual behaviors." *State v. Schrupp*, 625 N.W.2d 844, 848 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. July 24, 2001). Thus, we could conclude that appellant was engaged in innocent behavior. However, the district court determined that the officer's training and experience, combined with the surrounding circumstances led him to conclude that appellant was engaged in illegal activity. Therefore, the possibility that appellant's behavior could have been innocent does not render the officer's suspicion unreasonable. The district court did not err in concluding that the officer had reasonable suspicion of criminal activity to initiate an investigative stop.

Expanded Stop

Appellant next argues that even if the stop was reasonable, the officer unlawfully expanded the search by ordering him to open his hand, asserting that an officer may extend an investigative stop only to discover weapons and the officer had no reason to believe that appellant was holding a weapon.

"An initially valid stop may become invalid if it becomes 'intolerable' in its 'intensity or scope.'" *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). "[E]ach

incremental intrusion . . . must be strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible." *Id.* (quotation omitted). Officers may expand a stop to investigate other illegal activity if the officer has reasonable, articulable suspicion of *other* illegal activity. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). Our supreme court has construed the reasonableness requirement "to limit the scope of a *Terry* investigation to that which occasioned the stop, to the limited search for weapons, and to the investigation of only those additional offenses for which the officer develops a reasonable, articulable suspicion within the time necessary to resolve the originally-suspected offense." *Id.* at 136. The state has the burden to demonstrate that the search was sufficiently limited in scope and duration. *Askerooth*, 681 N.W.2d at 365.

The officer appropriately investigated his initial suspicion of criminal activity and in doing so developed reasonable suspicion of additional criminal activity. *See Wiegand*, 645 N.W.2d at 136. The officer, based on his experience and observations, initially suspected appellant of narcotics trafficking. When the officer instructed appellant to place his hands on the squad, appellant placed only one hand on the vehicle, keeping his left hand at his side. This prompted the officer to order appellant to open his hand. The officer observed a white tissue in appellant's hand with a rock of suspected crack cocaine. The officer reasonably suspected that appellant was holding contraband because he failed to put his hand on the squad. This was not an impermissible expansion of the stop because the officer developed additional reasonable suspicion of criminal activity. The district court properly denied appellant's suppression motion.

Affirmed.