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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1070

In the Matter of the Welfare of: K. L. C., Child

Filed January 17, 2012
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27JV108034

David W. Merchant, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Alan J. Harris, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Stoneburner, Judge.

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

STONEBURNER, Judge

Appellant challenges his adjudication of delinquency for underage possession of a firearm, arguing that the district court erred by denying his motion to suppress statements that he made at the time of his apprehension. Appellant argues that the statements are the fruit of an illegal arrest and, alternatively, should have been suppressed because no *Miranda* warning was given before appellant was asked biographical information, and the

questioning about biographical information was not recorded. Because there was probable cause for appellant's seizure and no *Miranda* warning or recording is required for routine biographical questioning, we affirm.

FACTS

On an August 2010 afternoon, an identified citizen called 911 to report that a teenager was "waving a gun and [] threatening everyone" on a neighboring porch. The caller described the teen as between 15 and 17 years old, about 5'9" and skinny, having "real dark skin," wearing an un-tucked white T-shirt, tight-fitting black jeans, a black baseball cap and black "leather-like" tennis shoes.

Minneapolis Police Officers Scott Buck and Troy Lennander responded within minutes of the dispatch and saw a gathering at the reported address. To avoid alarming the group, they approached the identified address on foot from the alley. As they walked toward the backyard of the address, they saw a young male who appeared to match the dispatched description sprint across the alley. The officers yelled for him to stop and pursued when he kept running. The officers lost sight of him and called for backup. Officer Buck continued the pursuit along the route he thought the teen had taken and found him hunched over next to a garage. The teen, later identified as appellant K.L.C., has a date of birth June 9, 1996, has dark skin and is thin, but is several inches shorter than the caller described. When Officer Buck found him, he was hatless, was wearing white, not black, tennis shoes, and was unarmed.

Officer Buck handcuffed K.L.C. and escorted him back to the squad car, retracing the path he believed K.L.C. had taken, looking for, but not finding, a discarded gun.

Officer Buck placed K.L.C. in the back seat of the squad car. Officers Buck and Lennander, joined by Sergeant Taylor, who had responded to the call for backup, continued to look for a gun. After a few minutes, a .22 revolver, nine-shot pistol was found along a fence, under some shrubs in a lot just north of the address where K.L.C. was found crouched beside the garage.

While Officers Lennander and Buck took photographs, Sergeant Taylor went to the squad car and asked K.L.C. biographical questions in an unrecorded interview that was not preceded by a *Miranda* warning. Sergeant Taylor obtained K.L.C's name and age (14), and K.L.C. volunteered the information that his mother was at work. Sergeant Taylor asked where she worked. K.L.C. told him, then blurted out, "I just got the gun for protection—I only had it for protection."

A petition was filed alleging that K.L.C. is delinquent for violation of Minn. Stat. § 624.713, subd.1(1), 2 (2010) (making possession of a firearm by certain persons, including people under the age of 18, a felony). K.L.C. moved to suppress the statements that he made to Sergeant Taylor, arguing that his statements are the fruit of an illegal arrest in violation of his Fourth Amendment rights and that his Fifth and Sixth Amendment rights were violated when he was questioned in an unrecorded custodial interview in the squad car without having been given a *Miranda* warning. The district court denied the motion to suppress, concluding that (1) the totality of the circumstances gave the officers a reasonable articulable suspicion of criminal activity sufficient to support K.L.C.'s seizure; (2) Sergeant Taylor's questions were "routine booking questions" that did not constitute an interrogation requiring a *Miranda* warning, and

K.L.C.'s statements were spontaneously and voluntarily made; and (3) the *Scales* recording requirement did not apply. After a trial, the district court concluded that K.L.C. committed the offense charged in the petition. K.L.C. was adjudicated delinquent and was placed on supervised probation for two years. Imposition of disposition was stayed pending this appeal.

D E C I S I O N

When reviewing a pretrial order denying a motion to suppress evidence, we review the facts for clear error and determine as a matter of law whether the evidence must be suppressed. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992); *State v. Hollins*, 789 N.W.2d 244, 248 (Minn. App. 2010), *review denied* (Minn. Dec. 22, 2010).

I. The district court did not err in denying K.L.C.'s motion to suppress under the Fourth Amendment.

K.L.C. first argues that his statements about possessing a gun should be suppressed as the fruit of an illegal arrest. The United States and Minnesota Constitutions protect citizens from "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. 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).

But, under the principles set out by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968), an officer "may temporarily detain a suspect without probable cause if (1) the stop was justified at its inception by reasonable articulable suspicion and (2) the actions of the police during the stop were reasonably

related to and justified by the circumstances that gave rise to the stop in the first place." *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (quoting *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (discussing the application of *Terry* in Minnesota)). "Evidence obtained as a result of a seizure without reasonable suspicion must be suppressed." *Diede*, 795 N.W.2d at 842.

The state asserts that K.L.C. was lawfully seized for investigative purposes at the time he made statements about possessing a gun. K.L.C., based on the district court's finding that he was "in custody" when he made the statements about possessing the gun, argues that he was under arrest at the time he made the statements, and, because the officer lacked probable cause to arrest him for possession of a gun, the arrest was illegal.

In reviewing a stop based on undisputed facts, the test is not whether the district court's determination is clearly erroneous, but whether, as a matter of law, the basis for the stop was adequate. *See State v. G.M.*, 560 N.W.2d 687, 691 (Minn. 1997) (stating that "[a] stop is lawful if the officer articulates a particularized and objective basis for suspecting the particular persons stopped of criminal activity"). We make the determination about the adequacy of the basis of a stop based on the totality of the circumstances. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). Here we conclude that the totality of the circumstances supports both an investigative stop and arrest, such that K.L.C.'s claim that his statements are the fruit of an illegal seizure is without merit.

Officers Buck and Lennander were dispatched to an address based on an identified private citizen's eyewitness report. Tips received from private citizen informants are presumed reliable. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007). And information

from an identified informant is deemed particularly reliable because the police can locate that person later if necessary. *State v. Timberlake*, 744 N.W.2d 390, 394 (Minn. 2008).

As they approached the address in their squad car, the officers saw a gathering consistent with the citizen's description of the scene. As the officers approached the residence on foot from the alley, they saw a person matching the description given by the citizen running from the address. K.L.C. makes much of some minor discrepancies between the description given by the citizen to the dispatcher and the officer's testimony about what they observed. Specifically, only Officer Buck said that the person running was wearing a hat; K.L.C. is several inches shorter and somewhat younger than as described by the caller; and he was wearing black, not white shoes as described by the caller. But the record supports the district court's finding that the person running "closely matched" the description given by the informant. K.L.C. is a dark-skinned, thin, teenaged male and was wearing a white T-shirt and dark pants, as described. Neither his height nor his age differed dramatically from the caller's description. The color of his shoes is the only obvious discrepancy. We conclude that, under *Terry*, the citizen's tip, corroborated by the close match of the caller's description of the scene and the person, gave the officers sufficient articulable suspicion to stop the person who was running to investigate the report that a young person matching his description had been threatening others with a gun.

The officers yelled at K.L.C. to stop, but he continued to run. K.L.C. points out that Officer Buck was not sure that K.L.C. saw or heard the officers, but the district court found that the officers yelled "loudly," and the record supports this finding. The officers

gave chase and found the youth hiding. At this time, the officers had additional articulable suspicion to detain K.L.C. to investigate. *See State v. Houston*, 654 N.W.2d 727, 732–34 (Minn. App. 2003) (holding that Houston's action of evading officers by running away supported the officers' actions in detaining him), *review denied* (Minn. Apr. 27, 2005).

Additionally, as the state argues, K.L.C.'s actions of running away from the police and hiding from the police gave them probable cause to arrest K.L.C. for the misdemeanor offense of evading a peace officer by means of running or hiding in violation of Minn. Stat. § 609.487, subd. 6 (2010). *See* Minn. Stat. § 629.34 subd. 1(c)(1) (2010) (authorizing police officers to make arrests without a warrant for a public offense that "has committed or attempted in the officer's presence"). The district court did not err by denying K.L.C.'s motion to suppress under the Fourth Amendment.

II. The district court correctly concluded that K.L.C.'s statements were not made during an interrogation that required a *Miranda* warning or recording.

K.L.C. argues that even if his statements are not the fruit of an illegal seizure, the district court nonetheless erred by failing to suppress the statements as obtained in violation of *Miranda* and *Scales.* We disagree.

A. Miranda requirement

Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966), provides that whenever a person in custody is subject to interrogation, the person must be advised of certain constitutional rights, and failure to advise a defendant of those rights makes any statement obtained inadmissible. In this case, it is undisputed that K.L.C. was in custody

at the time he made the statements he seeks to suppress. But interrogation, under *Miranda*, refers only to express questioning or words or actions on the part of police, other than those normally attendant to arrest and custody, that police should know are reasonably likely to elicit an incriminating response from the defendant. *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 1688 (1980). And a *Miranda* warning is not required before police ask routine booking or biographical questions. *State v. Widell*, 258 N.W.2d 795, 797 (Minn. 1977); *State v. Link*, 289 N.W.2d 102, 107 (Minn. 1979); *State v. Hale*, 453 N.W.2d 704, 707 (Minn. 1990). The warning is not required before such questions because the information sought has "value to the criminal process independent of any tendency to uncover admissions." *State v. Smith*, 295 Minn. 65, 69, 203 N.W.2d 348, 351 (1972). "The police have a legitimate interest in orderly records identifying the names [and] addresses" of people they question or arrest. *Id.*

Although K.L.C. challenges the credibility of Sergeant Taylor, the district court found credible Sergeant Taylor's testimony that he spoke to K.L.C. "in order to find out his name, age and date of birth, something police routinely do after a suspect is detained." And we defer to the credibility determinations of the district court. *In the Matter of the Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). The district court correctly held that K.L.C. was not subject to a custodial interrogation that required a *Miranda* warning, and the officers did not violate K.L.C.'s constitutional rights by failing to give the *Miranda* warning.

The record also supports the district court's finding that K.L.C.'s statements about possessing a gun were spontaneous and voluntary. Statements given freely and

voluntarily without any compelling influences are admissible. *Miranda*, 384 U.S. at 478, 86 S. Ct. at 1630; *Collins v. State*, 385 N.W.2d 52, 54 (Minn. App. 1986), *review denied* (Minn. May 29, 1986). Spontaneous and unsolicited statements are not the product of custodial interrogation. *State v. Edrozo*, 578 N.W.2d 719, 726 (Minn. 1998). We apply a totality-of-the circumstances test to determine whether the state met its burden of proving that a defendant's statement was voluntary. *State v. Munson*, 594 N.W.2d 128, 141 (Minn. 1999). Because the district court found Sergeant Taylor's testimony that K.L.C. blurted out the statements in response to a question about where his mother works credible, we conclude that the state met its burden.

B. *Scales* requirement

State v. Scales, 518 N.W.2d 587, 592 (Minn. 1994), holds that "all custodial interrogation including any information about rights, any waiver of those rights, and all questioning shall be electronically recorded where feasible and must be recorded when questioning occurs at a place of detention." The district court *may* suppress any statements made during an unrecorded interrogation if it finds that the violation of the recording requirement was substantial. *Id.* "Whether there was a substantial violation of [the] *Scales* requirement is a legal question subject to de novo review." *State v. Jarvis*, 649 N.W.2d 186, 194 (Minn. 2002) (citation omitted), *aff'd* 665 N.W.2d 518 (Minn. 2003).

K.L.C. argues that because he was in custody and recording equipment was available in the squad car, *Scales* applies to the officer's biographical questioning. We disagree. "The purpose of the recording requirement is to avoid factual disputes about a

suspect's claim that police officers violated his rights." *Jarvis*, 649 N.W.2d at 195. But K.L.C. has not alleged any violation of his rights other than the lack of a *Miranda* warning that was not required. K.L.C. has not raised a factual dispute about whether or under what circumstances the statements he seeks to suppress were made, other than to question Sergeant Taylor's credibility. And the district court correctly concluded that Sergeant Taylor's questions did not constitute an interrogation. K.L.C. has not established that the district court erred by holding that *Scales* does not apply to the routine biographical questioning by Sergeant Taylor, nor has K.L.C. established that, even if there was a recording violation, the violation was substantial under the circumstances of this case.

Affirmed.