STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2299

State of Minnesota,
Respondent,

vs.

Richard Ronald Tieso,
Appellant.

Filed October 9, 2012
Affirmed
Kirk, Judge

Anoka County District Court
File No. 02-CR-11-2238

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

Anthony C. Palumbo, Anoka County Attorney, Robert D. Goodell, Assistant County Attorney, Anoka, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Bjorkman, Judge; and Rodenberg, Judge.

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

KIRK, Judge

Appellant challenges his felony conviction of a fifth-degree controlled substance offense in violation of Minn. Stat. § 152.025, subd. 2(b)(1) (2010). We affirm.

FACTS

While patrolling the parking lot at Northtown Mall, Blaine Police Officer Timothy Hawley observed appellant Richard Ronald Tieso kneeling on the ground and digging around in a vehicle through its open passenger door. The vehicle was located near a health club where a rash of smash-and-grab-style thefts from vehicles had been recently reported to the police. His suspicions aroused, Officer Hawley parked his unmarked squad car and continued to observe appellant.

As he watched, he saw appellant visually scan the parking lot and move to the other side of the vehicle, where he continued digging in the car. Officer Hawley approached, identified himself as a police officer, and asked appellant what he was doing. Appellant appeared startled at seeing Officer Hawley.

Appellant nervously explained that he was looking for his cell phone. Officer Hawley asked who owned the car. Appellant explained that his friend Bradley Pust was the owner and was shopping inside the mall. Before approaching appellant, Officer Hawley had learned by running a check of the car's license plates that—just as described by appellant—the car was registered to Pust.

Officer Hawley asked appellant to call Pust from his cell phone and have him come to the parking lot to verify he owned the car and that appellant had permission to

dig around in it. The parties differ as to whether appellant reached Pust on the phone, but both agree that Officer Hawley did not have any contact with Pust to verify who owned the car.

Sergeant Brian Owens then arrived at the scene to assist Officer Hawley. As Sergeant Owens continued questioning appellant, Officer Hawley walked to the passenger side of the car where he observed through the open door that the steering wheel had been punched, a signal that Officer Hawley took to indicate someone had attempted hot-wiring the car. Officer Hawley decided to detain appellant on suspicion of auto theft.

While handcuffing appellant, Officer Hawley asked him if he had anything on his person that would cut or poke him. Appellant responded, "No, but I have some cocaine in my pocket." Officer Hawley discovered in appellant's pocket a digital scale and two baggies containing a total of 1.5 grams of cocaine.

At the omnibus hearing, appellant moved the district court to suppress the evidence of his cocaine possession, arguing that the evidence was obtained through police inquiries that impermissibly exceeded the scope of the suspicions initially giving rise to the stop. The district court denied the motion, finding that Officer Hawley detained appellant only long enough to effectuate the purpose of the stop, namely to investigate whether his actions and possession of the motor vehicle were lawful.

Appellant stipulated to the prosecution's case pursuant to Minn. R. Crim. P. 26.01, subd. 4, and the district court found him guilty. This appeal followed.

D E C I S I O N

Following a stipulated-facts proceeding under Minn. R. Crim. P. 26.01, subd. 4, this court's review is limited to the question of whether the district court properly denied appellant's pretrial motion to suppress evidence. Minn. R. Crim. P. 26.01, subd. 4(f). "When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in . . . not suppressing . . . the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review de novo whether a seizure is justified by reasonable suspicion or probable cause. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

A. Suspicion of theft from the car was not necessarily dispelled by appellant's explanation.

Appellant contends that a permissible investigatory stop ripened into an impermissible seizure at the point Officer Hawley required him to contact Pust on his cell phone because the necessary foundation of reasonable suspicion was lacking. Both the United States and Minnesota Constitutions protect against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "[A] police officer can lawfully make an investigative seizure, commonly referred to as an investigative stop, of an individual if the officer is 'able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *State v. Holmes*, 569 N.W.2d 181, 184 (Minn. 1997) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). When reviewing whether a seizure was supported by a reasonable suspicion, we are mindful that, by virtue of the special training they receive,

police officers' assessments of reasonable suspicion may rely on inferences and deductions that might elude an untrained person. *State v. Smith*, 814 N.W.2d 346, 352 (Minn. 2012).

Appellant does not argue that Officer Hawley lacked reasonable suspicion to approach and start asking questions. Instead, he contends that once he correctly identified the car's owner and offered an innocent explanation for why he was rummaging through the car, he had dispelled any reasonable basis for Officer Hawley's suspicions. Accordingly, appellant argues that when Officer Hawley required appellant to get a hold of Pust on the phone, the permissible investigatory stop became an impermissible seizure.

Although appellant offered an innocent explanation for his conduct, Officer Hawley had no obligation simply to accept that explanation and move on. Reasonable suspicion can be found even when a person's behavior is consistent with innocent activity. *State v. Combs*, 398 N.W.2d 563, 565 (Minn. 1987). A police officer is entitled to assess all of the circumstances and to draw inferences and make deductions in determining whether suspicion exists or is allayed. *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 695 (1981). However, the police officer's assessment of the situation "must yield a particularized suspicion" that the suspect was engaged in wrongdoing. *Id.*

Under these circumstances, we conclude that Officer Hawley had a reasonable and particularized suspicion to support seizing appellant even in the face of appellant's innocent explanation. Officer Hawley observed appellant rummaging in a vehicle in an

area known for theft from cars, he saw him furtively scanning the parking lot, and appellant's demeanor was both startled and nervous when Officer Hawley first approached him.[1] Appellant also confirmed that he was not the owner of the car. While appellant could provide a plausible explanation for his activities, Officer Hawley could also reasonably suspect that appellant was trying to cover his tracks and that he had learned the owner's name when digging through the car.

Appellant invites us to rely on *People v. Milaski*, in which New York state troopers detained the driver of a vehicle late at night in a parking lot known to be the site of criminal activity, including drug use, assault, disorderly conduct, and vandalism. 464 N.E.2d 472, 473 (N.Y. 1984). The suspect explained to the troopers that the vehicle he was driving was not his own, that he was returning it to the friend from whom he had borrowed it, and that he had stopped in the parking lot to urinate. *Id.* The court determined that this explanation was sufficient to dispel any reasonable suspicion of the police. *Id.* at 476. *Milaski* is fundamentally different because, unlike the troopers there, Officer Hawley observed appellant engage in the specific conduct known to be consistent with the criminal activity that had been occurring in the Northtown Mall parking lot. The suspect in *Milaski* was stopped merely for being in a high-crime area, and the troopers did not articulate specific behaviors connected with the crimes known to be occurring in the area.

[1] We recognize that a suspect's startled or nervous behavior is not sufficient, without more, to establish a reasonable suspicion. *State v. Syhavong*, 661 N.W.2d 278, 289 (Minn. App. 2003). In this case, appellant's nervous conduct was just one of several factors supporting Officer Hawley's reasonable suspicion.

B. Suspicions of other criminal activity may have remained after appellant's innocent explanation.

Even if appellant's innocent explanation were sufficient to dispel Officer Hawley's suspicion of theft *from* the car, his initial inquiries of appellant led to a reasonable suspicion of a theft *of* the car. Indeed, in its omnibus order, the district court acknowledged that Officer Hawley's initial suspicion of theft from the vehicle evolved into a suspicion that appellant was trying to steal the vehicle itself.

Appellant argues that there was no overlap between these suspicions. In other words, once appellant offered his explanation for why he was digging in his friend's car, Officer Hawley's reasonable basis for the stop expired. Only after seeing the punched steering wheel was there sufficient basis to suspect appellant of attempted auto theft.

A police officer may begin an inquiry based on suspicion of one crime and, during the course of that inquiry, develop a suspicion that a different crime has occurred. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). However, the officer must develop a reasonable, articulable suspicion of other illegal activity during the time necessary to resolve the original suspicion. *Id.* Under the circumstances here, it would have been reasonable for Officer Hawley to have begun the investigation suspicious that appellant was attempting to steal something from the car, and very quickly develop a concurrent suspicion that appellant was attempting to steal the car itself. During his initial inquiry into possible theft from the vehicle, Officer Hawley saw appellant furtively digging near the floor of both sides of the car and, immediately after questioning him, learned that appellant was not the owner of the car. These circumstances could reasonably give rise

to a suspicion that appellant was in the process of stealing the car well before Officer Hawley observed the punched steering wheel. Indeed, at the omnibus hearing Officer Hawley testified that his suspicions were not allayed at the point appellant offered an innocent explanation for his conduct: "At that point I still—based on what was going on it seemed very suspicious and just the condition of the car, leaving the doors open, et cetera, seemed a little strange."

In support of his view that the basis for a reasonable suspicion had expired, appellant points to several cases in which a police officer began an investigation and then received dispositive information that the initial suspicion giving rise to the stop was unfounded. For instance, in *State v. Hickman*, 491 N.W.2d 673 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992), this court upheld a trial court's suppression of evidence after an officer conducted a traffic stop for expired license plates and then—before approaching the suspect's car—noticed a valid temporary permit in the car's rear window. This court concluded that the police officer's demand to see the suspect's driver's license was improper because any suspicions the officer had were dispelled before he even approached the car. *Hickman*, 491 N.W.2d at 675.

Appellant's reliance on *Hickman* is not justified. The valid temporary permit displayed in Hickman's rear window necessarily foreclosed any reasonable suspicion about the validity of the license plates. Appellant, on the other hand, offered a plausible explanation for his activities, but not one that *necessarily* foreclosed Officer Hawley's reasonable suspicions. At the time Officer Hawley asked appellant to summon Pust, a reasonable suspicion of criminal activity existed to support the seizure. Therefore, the

district court did not err in declining to suppress evidence of appellant's cocaine possession obtained through the seizure.

Affirmed.