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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-37**

State of Minnesota,
Respondent,

vs.

D'Angelo Eugene Turner,
Appellant.

**Filed October 31, 2011
Affirmed
Minge, Judge**

Hennepin County District Court
File No. 27-CR-10-14096

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

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

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

Considered and decided by Connolly, Presiding Judge; Halbrooks, Judge; and Minge, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges the district court's denial of his motion to suppress evidence obtained when they attempted to talk to him on December 1, 2009. Appellant asserts that

the encounter constituted a seizure and that the police did not have reasonable, articulable suspicion of criminal activity prior to initiating the encounter. We affirm.

FACTS

On the morning of December 1, 2009, two Minneapolis police officers learned that D'Angelo Turner "was possibly going to be involved in a gang retaliation shooting." One officer knew Turner and was aware that, because of a felony criminal record, it was illegal for him to have a gun. While patrolling in a marked police squad car, the two officers saw Turner with an unknown woman who was wearing a backpack.

Without activating the squad car's lights or sirens, the officers approached Turner in their car. They observed that Turner appeared nervous and startled by the marked squad car. One officer testified that he saw Turner try to put a gun into the woman's backpack. As the officers stopped and got out of their squad car, Turner fled. The officers yelled for Turner to stop, then chased him through yards and an alley, but ultimately lost track of him. One officer saw that, as Turner ran, he was carrying what appeared to be a gun. Upon retracing the path of the foot chase, the officers recovered a silver handgun.

Ultimately, Turner was arrested and charged with being a prohibited person in possession of a firearm pursuant to Minn. Stat. § 624.713, subd. 1(2) (2008). The district court denied Turner's pretrial motion to suppress evidence that he argued was obtained as a result of an attempted seizure in violation of his constitutional rights. The case was submitted to the court on stipulated facts, and the district court found Turner guilty. This appeal follows.

DECISION

The issue on appeal is whether the district court erred in determining that the police officers had reasonable, articulable suspicion of criminal activity when they attempted to seize Turner. An improper seizure would support suppression of evidence. *State v. Jackson*, 742 N.W.2d 163, 177–78 (Minn. 2007). 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).

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.* A person need not be under police control to be “seized;” they may in fact have taken off running. *See In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993) (person is “seized” even if they have not submitted to police authority).

A police officer may make a limited investigatory stop of an individual if the officer has “a reasonable, articulable suspicion that a suspect might be engaged in criminal activity.” *State v. Flowers*, 734 N.W.2d 239, 250 (Minn. 2007) (quotation

omitted); *see Terry v. Ohio*, 392 U.S. 1, 30–31, 88 S. Ct. 1868, 1884–85 (1968). Reasonable suspicion requires “something more than an unarticulated hunch, that the officer must be able to point to something that objectively supports the suspicion at issue.” *State v. Wasson*, 615 N.W.2d 316, 320 (Minn. 2000).

The parties agree that the officers seized Turner when they chased him. The officers testified that Turner began running at the same time that they stopped the squad car, at which point they also immediately exited the vehicle to pursue him. Prior to that time the lights of the squad car had not been activated and the officers had not attempted to communicate with Turner. As they began running, one officer yelled at Turner to stop. At that point, a reasonable person would have believed that they were not free to leave and a seizure occurred.

The central issue is whether the police officers had reasonable, articulable suspicion at the time that they initiated the attempted seizure. When the officers were roughly forty feet away from Turner in their squad car, one officer “observed that he had a gun in his hand and he was attempting to put it inside a backpack that the female had.” *See State v. Houston*, 654 N.W.2d 727, 730–32 (Minn. App. 2003) (noting that defendant’s nervous appearance and apparent attempt to hide an object that was possibly a weapon from the officers created a reasonable suspicion), *review denied* (Minn. Mar. 26, 2003). When the officers observed Turner in possession of a firearm, knowing that he had a felony record and could not legally possess a gun, they had a strong indication of criminal activity.

Considering the circumstances, we conclude that the officers clearly had reasonable, articulable suspicion that Turner was engaged in criminal activity, that the seizure was lawful, and that the improper-seizure claim is not a basis for excluding any evidence.

Affirmed.

Dated: