STATE OF MINNESOTA
IN COURT OF APPEALS
A11-38

State of Minnesota,
Respondent,

vs.

D'Angelo Eugene Turner,
Appellant.

Filed October 24, 2011
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. 27-CR-10-14094

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

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

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

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

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

KLAPHAKE, Judge

On appeal from his conviction of being a prohibited person in possession of a firearm, Minn. Stat. § 624.713, subds. 1(2), 2(b) (2010), appellant D'Angelo Eugene

Turner argues that the district court erred in denying his pretrial motion to suppress evidence obtained as the result of his warrantless detention. Because, based on the totality of the circumstances, police had reasonable articulable suspicion of criminal activity to support an investigatory stop of appellant, we affirm.

D E C I S I O N

"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 suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). The warrantless search and seizure of an individual is prohibited under the United States and Minnesota constitutions, subject to limited exceptions. U.S. Const. amend. IV; Minn. Const. art. I, § 10. One of those exceptions is that 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, 88 S. Ct. 1868, 1884-85 (1968). While this standard is less stringent than the probable-cause-to-arrest standard, *see State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (comparing factual showings for investigative and probable-cause-based detentions), it requires a particularized and objective basis for the stop, and the officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880. The stop must be more than "the product of mere whim, caprice, or idle curiosity." *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003).

Here, police received a tip from a confidential reliable informant (CRI) on November 5, 2010, that appellant "was in the area of Lowry and Emerson and was in possession of a firearm." The officer who received the tip had known appellant for several years and even had arrested him on prior occasions. In addition, the officer had personally used the CRI four or five times before, and the police community response team had used him "numerous times" to obtain search warrants or for other purposes, such as recovery of narcotics and firearms. Acting on this tip, two other officers, one of whom also knew appellant, drove a squad car to the intersection. As they were coming to a stop, the officer and appellant recognized each other, appellant registered a surprised look, and appellant immediately ran into a barbershop located at the intersection. Within the barbershop police found appellant hiding inside a small nook. On the floor of the nook, police discovered a black handgun and an additional ammunition magazine.

An informant may provide a tip that is adequate to support an investigatory stop of an individual if the tip has sufficient indicia of reliability. *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). Indicia of reliability are demonstrated when an informant is credible and when the information provided by the informant is obtained in a reliable manner. *Id.* "Having a proven track record is one of the primary indicia of an informant's veracity." *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (discussing use of information provided by informant to develop probable cause to search a vehicle). Here, the CRI was well-known to police, had been used by the officers involved in appellant's detention and arrest on at least four or five prior occasions, and had assisted police numerous times in obtaining search warrants or for other purposes, such as

recovery of narcotics and firearms. This information establishes the credibility of the CRI. *See id.* at 136.

The CRI must also demonstrate a basis of knowledge of the information; in the alternative, the "basis of knowledge may also be supplied indirectly through self-verifying details that allow an inference that the information was gained in a reliable way and is not merely based on a suspect's general reputation or on a casual rumor circulating in the criminal underworld." *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000) (discussing CRI reliability in the context of establishing probable cause to conduct a warrantless arrest), *review denied* (Minn. July 25, 2000). Here, police were able to corroborate only some information provided by the CRI before detaining appellant: the police verified that appellant was standing on the corner of Lowry and Emerson, where the CRI said he could be found, and police also easily recognized appellant from prior contacts with him, including his multiple prior arrests. *See Munson*, 594 N.W.2d at 136 (permitting "corroboration of several specific details of the CRI's tip [to] provide the police with the reasonable articulable suspicion of criminal activity that is needed to execute a valid *Terry* stop" and noting that "the independent corroboration of even innocent details of an informant's tip may support a finding of probable cause"); *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998) (noting that an informant's reliability may be established "by sufficient police corroboration of the information supplied, and corroboration of even minor details can lend credence to the informant's information where the police know the identity of the informant"); *see also United States v. Solomon*,

432 F.3d 824, 828 (8th Cir. 2005) (permitting inference that uncorroborated information is reliable when some information from informant has been corroborated).

Although the police corroborated only appellant's location, the district court also properly considered the fact that appellant fled from police in deciding that a legal basis existed for the investigatory stop of appellant. *See Flowers*, 734 N.W.2d at 251 (reviewing whether police had reasonable articulable suspicion for stop under totality of circumstances). In its suppression order, the district court viewed appellant's conduct of fleeing the scene as having tipped the scale in favor of upholding the investigatory stop, stating: "[O]nce the Defendant became startled by the police presence and fled to a small corner nook of the local barber shop, the totality of the circumstances created a reasonable articulable suspicion that the Defendant was involved in criminal activity."

Appellant disagrees with the district court's use of his flight from police to establish factual support for the stop. In the seminal case of *State v. Ingram*, 570 N.W.2d 173, 178 (Minn. App. 1997), *review denied* (Minn. Dec. 22, 1997), this court held that a defendant's conduct of fleeing from a police officer could be considered an intervening act that could support an otherwise illegal search or seizure when the flight from police was coupled with other independent or intervening conduct, such as resisting arrest. Following *Ingram*, this court has made a distinction between the admissibility of evidence of fleeing an illegal stop or seizure and the admissibility of other post-stop conduct. In *State v. Olson*, 634 N.W.2d 224, 229 (Minn. App. 2001), this court stated: "*Ingram* also explains that resisting arrest is different from merely fleeing and attempting to dispose of incriminating evidence; disposing of contraband is a 'predictable and

common response' to an illegal search that warrants suppression of the evidence." (quoting *Ingram*, 570 N.W.2d at 178), *review denied* (Minn. Dec. 11, 2001).

However, this case is factually distinguishable from *Ingram* because appellant fled from the officers *before* they attempted to detain him or made any show of force that would have suggested to appellant that he was about to be stopped or seized. "[F]light from police officers will serve to furnish the basis of an investigative stop." *City of St. Paul v. Vaughn*, 306 Minn. 337, 344, 237 N.W.2d 365, 369 (1975). Appellant turned and ran inside the barber shop after he made eye contact with a police officer, although there was no evidence showing that the squad car displayed flashing lights or a siren, or that the police officers spoke or gestured to appellant before he ran. Under these circumstances, appellant's flight from the scene was not attributable to a stop, and evidence of appellant's flight could be considered by the district court in determining the legality of the stop. *See State v. Vereb*, 643 N.W.2d 342, 345, 347 (Minn. App. 2002) (rejecting claim that police lacked reasonable articulable suspicion of criminal activity to support the stop of a vehicle carrying an individual suspected of procuring materials to manufacture methamphetamine; in determining the legality of the stop, the court considered, among other facts, that the vehicle sped away from the police at over 75 miles per hour before police initiated the stop of the vehicle).

Based on these facts, which included the CRI's tip and appellant's flight upon seeing the arrival of the police squad car, we conclude that police had a reasonable

articulable suspicion that appellant was involved in criminal activity to justify his detention within the barber shop.

Affirmed.