STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0207

State of Minnesota,
Respondent,

vs.

Deondre Demitrius Ramsey,
Appellant.

Filed December 3, 2012
Affirmed
Cleary, Judge

Ramsey County District Court
File No. 62-CR-11-3868

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Andrew W. Davis, William Anders Folk, Special Assistant Public Defenders, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Cleary, Judge; and Toussaint, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

CLEARY, Judge

Appellant was convicted of possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2010), following a traffic stop, search of the vehicle, and discovery of a firearm. Appellant challenges his conviction, arguing that the district court erred by denying his motion to suppress evidence because the police did not have reasonable articulable suspicion of criminal activity to expand the scope of the traffic stop by asking whether the vehicle contained contraband or a gun. Appellant also argues that the evidence is insufficient to prove beyond a reasonable doubt that he possessed the firearm found in the vehicle. We affirm.

FACTS

Shortly after 1:00 a.m. on March 15, 2011, St. Paul Police Officers Gliske and Lacska were on patrol in the area of Marshall Avenue and Victoria Street when they noticed a vehicle traveling southbound on Victoria Street at a high rate of speed. Appellant Deondre Ramsey, who was driving the vehicle, slowed down when he saw the officers' squad car, and both appellant and his passenger slouched down in their seats and did not look at the squad car as they passed it. The squad car began to follow the vehicle. The officers ran the vehicle's license plate number and learned that the vehicle was registered to a woman whom appellant later identified as his girlfriend.

At the intersection of Grand Avenue and Victoria Street, appellant failed to stop the vehicle at the stop light and failed to signal a turn onto westbound Grand Avenue. The officers signaled the vehicle to stop with the squad car's emergency lights. When the

vehicle did not pull over right away, the officers activated the squad car's siren. The vehicle traveled westbound on Grand Avenue, turned to go northbound on Chatsworth Street, and pulled over mid-block on Chatsworth Street between Grand Avenue and Summit Avenue.

Both officers approached the vehicle, with Officer Gliske approaching on the driver's side and Officer Lacska approaching on the passenger's side. Officer Gliske later described appellant's disposition when he approached as "extremely nervous. Moving around without a purpose, I guess. Normally when I pull cars over, somebody over, they are looking for their ID, or looking for their insurance. And [appellant] was kind of just moving all over without really any purpose. Which made me nervous." Officer Gliske described the passenger's disposition as "really chatty. He couldn't sit still. He was fidgeting, ripping up a piece of paper, playing with it as I was talking to him. And just extremely nervous for no apparent reason."

Appellant had gang tattoos on his face and hands, and Officer Gliske recognized him from a photograph in a "gang list" that the officer had previously seen. Officer Gliske requested identification, and appellant stated that he did not have a driver's license. The officer asked questions regarding where appellant was coming from, and appellant became agitated and aggressive and began to yell. Officer Gliske thought that appellant was trying to distract him from something and asked about appellant's criminal history. Appellant admitted that he was a gang member; that he had been arrested several times; and that he had previous firearm convictions. This information concerned Officer Gliske because appellant "was coming from a high-crime area, going to an area that at

this time of night really gets armed robberies a lot, because of people coming from the bars." Officer Gliske thought that appellant "might have a weapon, or he was up to something illegal." During this conversation, appellant would not look at Officer Gliske and continued to be "extremely nervous about something."

Officer Gliske asked whether there was anything illegal in the vehicle or whether appellant "had anything on him," and appellant responded "no" to the questions. Officer Gliske "knew that [he] wasn't looking for drugs," but he "had a feeling that [appellant] had a firearm in the vehicle." He asked if appellant had a gun in the vehicle. Officer Gliske later testified that, following this question, appellant's "demeanor completely changed. And he just stared directly into my eyes for the first time. He just stared at me for seconds, as I stared at him." The officer asked the question again, and appellant responded "maybe" and then "no no. No, I don't." Officer Gliske became concerned for the safety of himself and his partner and ordered appellant to put his hands on his head. Appellant eventually complied and was pulled out of the vehicle, frisked, and put into the squad car. The passenger also exited the vehicle and was frisked.

Officer Gliske searched the vehicle. In a space underneath the center console, he discovered a firearm wrapped in a shirt. Officer Gliske later testified that the area where the firearm was found was accessible from both the driver's and passenger's sides of the vehicle. Officer Gliske asked appellant and the passenger about the firearm, and they both stated that they did not know anything about it and that it did not belong to them. Both appellant and the passenger were arrested.

DNA samples were taken from appellant, the passenger, and appellant's girlfriend and compared to DNA found on the firearm. A DNA forensic scientist with the Bureau of Criminal Apprehension performed the comparison and later testified that the DNA profile obtained from the firearm was consistent with being a mixture of DNA from four or more individuals. The forensic scientist testified that approximately 96.9% of the general population could be excluded from the mixture and that appellant's girlfriend and passenger were excluded from being possible contributors to the mixture, but that appellant could not be excluded from being a possible contributor.

Appellant was charged with possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2). Appellant moved to suppress the evidence against him, arguing that the discovery of the firearm was the result of an unlawful search and seizure. When the case came before the district court for trial, the parties agreed to combine the testimony for the suppression motion with the testimony for trial and allow the court to make decisions on both the motion and guilt. Appellant waived his right to a jury, and a bench trial was held. Following trial, the district court denied appellant's motion to suppress evidence and found him guilty of possession of a firearm by an ineligible person. This appeal followed.

D E C I S I O N

I.

When reviewing a district court's decision on a motion to suppress evidence, an appellate court independently reviews the facts and determines whether, as a matter of law, the district court erred in suppressing or not suppressing the evidence. *State v.*

Harris, 590 N.W.2d 90, 98 (Minn. 1999). The validity of a search or seizure is a question of law, which is reviewed de novo. *State v. Bauman*, 586 N.W.2d 416, 419 (Minn. App. 1998), *review denied* (Minn. Jan. 27, 1999).

The Fourth Amendment of the United States Constitution and Article I, section 10 of the Minnesota Constitution guarantee the "right of the people to be secure in their persons, houses, papers, and effects" against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. The temporary detention of individuals during the stop of a vehicle by the police, even if only for a brief period and for a limited purpose, is a seizure of persons under both constitutions. *See Whren v. United States*, 517 U.S. 806, 809–10, 116 S. Ct. 1769, 1772 (1996); *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003). The Minnesota Supreme Court has adopted the principles and framework of *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968), for evaluating the reasonableness of seizures during traffic stops. *State v. Askerooth*, 681 N.W.2d. 353, 363 (Minn. 2004). "A *Terry* analysis involves a dual inquiry. First, we ask whether the stop was justified at its inception. . . . Second, we ask whether 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." *Askerooth*, 681 N.W.2d at 364 (citing *Terry*, 392 U.S. at 19–20, 88 S. Ct. at 1879) (other citation omitted). "An initially valid stop may become invalid if it becomes intolerable in its intensity or scope." *Askerooth*, 681 N.W.2d at 364 (quotations omitted). Thus, each incremental intrusion during a traffic stop must be tied to and justified by the original legitimate purpose of the stop, independent probable cause, or reasonableness. *Id*. at 365.

Appellant admits that the initial stop of the vehicle was justified. *See State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) ("Ordinarily, if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle."). But appellant argues that Officer Gliske's questions regarding whether the vehicle contained contraband or a gun expanded the scope of the traffic stop beyond its original purpose and were unreasonable. The state does not dispute that Officer Gliske's questions expanded the scope of the stop, but argues that the questions were reasonable.

An incremental intrusion during a traffic stop may be "justified by a reasonable articulable suspicion of other criminal activity." *Fort*, 660 N.W.2d at 419. Reasonable articulable suspicion exists "when an officer observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997) (citing *Minnesota v. Dickerson*, 508 U.S. 366, 373, 113 S. Ct. 2130, 2135–36 (1993)). The reasonable-suspicion standard is not high, but the suspicion must be based on specific, articulable facts, not just a hunch or a whim. *See State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). "[T]he officer must have objective support for his belief that the person is involved in criminal activity." *George*, 557 N.W.2d at 578. Reasonableness is evaluated by looking at the totality of the circumstances and must be particularized and individualized to the defendant. *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005).

In this case, Officer Gliske observed appellant driving down the street at a high rate of speed shortly after 1:00 a.m. When appellant saw the squad car, he slowed down,

and he and the passenger slouched down in their seats. Appellant then ran a stop light, failed to signal a turn, and failed to pull over immediately when signaled to stop. When Officer Gliske approached the vehicle, appellant and the passenger both appeared to be "extremely nervous,"[1] and appellant was "[m]oving around without a purpose" and would not look at the officer. Appellant could not produce a driver's license and became agitated and aggressive and began to yell when asked where he was coming from, leading the officer to believe that appellant was trying to distract him from something. Officer Gliske recognized appellant as a gang member. Appellant admitted that he was a gang member; that he had a criminal history; and that he had previous firearm convictions. Officer Gliske described the area that appellant had been driving through as "a high-crime area." Taken together, these observations gave Officer Gliske reasonable articulable suspicion that appellant was engaged in criminal activity, allowing him to expand the scope of the traffic stop by asking whether the vehicle contained contraband or a gun. The district court did not err by denying appellant's motion to suppress evidence.

II.

In his supplemental brief, appellant argues that the evidence is insufficient to prove beyond a reasonable doubt that he possessed the firearm found in the vehicle. The

[1] We note that nervous behavior alone is generally not enough to support a finding of reasonable articulable suspicion, although an officer's perception of an individual's nervousness may contribute to the officer's reasonable suspicion. *See State v. Smith*, 814 N.W.2d 346, 352–54 (Minn. 2012) (summarizing Minnesota caselaw relating to nervousness as a contributor to reasonable articulable suspicion). Our decision here is based on the totality of the circumstances, and we do not rely entirely, or even predominantly, on the factor of nervousness.

state has not responded to this argument. The district court determined that appellant had constructively possessed the firearm because he "knowingly exercised dominion and control over it."

When reviewing a claim of insufficiency of the evidence, an appellate court must determine whether, given the facts in the record and any legitimate inferences that can be drawn from those facts, the trier-of-fact could reasonably conclude that the defendant is guilty beyond a reasonable doubt of the offense charged. *State v. Ulvinen*, 313 N.W.2d 425, 428 (Minn. 1981). The appellate court views the evidence in the light most favorable to the conviction and assumes that the trier-of-fact believed the state's witnesses and disbelieved any contrary evidence. *State v. Moore*, 481 N.W.2d 355, 360 (Minn. 1992).

In order to prove constructive possession of an item, the state must show either "that the police found the [item] in a place under [the] defendant's exclusive control to which other people did not normally have access" or "that, if police found it in a place to which others had access, there is a strong probability (inferable from other evidence) that [the] defendant was at the time consciously exercising dominion and control over it." *State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975). The constructive-possession doctrine permits a conviction where the state cannot prove actual possession, but the inference is strong that the defendant physically possessed the item at one time, did not abandon his possessory interest in it, and continued to exercise dominion and control over it up until the time of arrest. *Id.* at 104–05, 226 N.W.2d at 610. "We look to the totality of the circumstances in assessing whether or not constructive possession has

been proved." *State v. Denison*, 607 N.W.2d 796, 800 (Minn. App. 2000), *review denied* (Minn. June 13, 2000).

In this case, the firearm was found in a space underneath the center console that, according to Officer Gliske, was accessible from both the driver's and the passenger's sides of the vehicle. Officer Gliske testified that appellant's demeanor changed when asked if there was a gun in the vehicle and that appellant's initial response to the question was "maybe." Additionally, the forensic scientist testified regarding the DNA evidence in this case, stating that the DNA profile obtained from the firearm was consistent with being a mixture of DNA from four or more individuals, from which approximately 96.9% of the general population could be excluded. Appellant's girlfriend and passenger were excluded from being possible contributors to the mixture, but appellant could not be excluded. The evidence is sufficient to have permitted the district court to conclude beyond a reasonable doubt that appellant constructively possessed the firearm by knowingly exercising dominion and control over it.

Affirmed.