STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2075

State of Minnesota,
Respondent,

vs.

Michael Steven Fuller,
Appellant.

Filed October 28, 2013
Affirmed
Hudson, Judge

Hubbard County District Court
File No. 29-CR-12-35

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

Donovan D. Dearstyne, Hubbard County Attorney, Erika C.H. Randall, Assistant County Attorney, Park Rapids, 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 Schellhas, Presiding Judge; Hudson, Judge; and Ross, Judge.

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

HUDSON, Judge

Appellant challenges the district court's failure to suppress evidence at an omnibus hearing, leading to his conviction for fifth-degree methamphetamine possession at a

stipulated-facts trial pursuant to Minn. R. Crim. P. 26.01, subd. 4. Appellant argues that the district court erred by failing to suppress the evidence on the grounds that (1) officers unconstitutionally "froze" the premises while seeking a search warrant, and (2) officers unconstitutionally subjected appellant to a *Terry* stop-and-frisk during the freeze. Because both the freeze and the *Terry* stop-and-frisk were constitutional, we affirm.

FACTS

On January 6, 2012, agents of the Hubbard County sheriff's office worked with a confidential reliable informant (CRI) to set up a controlled buy of methamphetamine from suspected dealer Jerald Drewes. This particular controlled buy was the culmination of several between the CRI and Drewes. After Drewes received the buy money, agents followed him to Fuller Pawn Shop, where he met the suspected distributor, Robert Fuller, appellant's brother. The parties dispute whether the meeting took place in front of or inside of the pawn shop.

After the meeting, Drewes and Robert Fuller crossed the street, entered a nearby apartment building, and were arrested as they left. The arresting officers found one-half of a gram of methamphetamine on Robert Fuller. The lead agent directed three agents to "freeze" the pawn shop—securing the premises to prevent the destruction of evidence—while he sought a search warrant. He believed that the pawn shop contained evidence because the CRI had previously identified Robert Fuller as the source of the drugs and the pawn shop as the location for storing the drugs. This information was corroborated when Drewes took buy money to Robert Fuller at the pawn shop.

Appellant was the sole employee working at the pawn shop when the freeze began. Officers shut down the business and instructed all customers to leave and all employees to remain. The officers testified that they noticed many firearms, some uncased, in the pawn shop. Appellant acted strangely: he remained seated, rested his hand on an open drawer out of the officers' view, stared straight ahead, and refused to make eye contact. One officer testified that appellant's behavior "didn't seem right" and suggested that he was hiding something. Although no weapons were plainly visible within appellant's reach, officers later found a loaded handgun in the drawer on which appellant's hand rested. Based on appellant's odd behavior and the several uncased guns in the pawn shop, appellant was frisked for weapons.

The pat-down search of appellant revealed a long, hard, cylinder-like object. The officer was initially unsure whether the object was a long folding knife or a pipe, but once he felt the bulb at the object's end, he strongly suspected it was a methamphetamine pipe. He removed the object from appellant's pocket and confirmed that it was a pipe containing methamphetamine residue. Appellant was arrested and subjected to another search, which revealed three small baggies of crystal meth—about a gram in total—in his pocket.

The state charged appellant with fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2010). Appellant challenged the constitutionality of the freeze and the *Terry* search at an omnibus hearing. The district court denied appellant's motion to suppress evidence of the drug. Pursuant to Minn. R. Crim. P. 26.01, subd. 4, appellant waived his right to a jury trial, and the district court

decided the case on stipulated facts, which included a 27-page packet containing various incident and evidence reports and all of the evidence and testimony heard at the omnibus hearing. On that evidence, the district court found appellant guilty of fifth-degree possession. Appellant now contests the district court's failure to suppress evidence leading to his conviction.

D E C I S I O N

I

Appellant argues that the district court erred when it found that freezing the pawn shop was constitutional and refused to suppress the evidence discovered during the search.

A district court's decision on the suppression of evidence is a question of law that we review de novo. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). We review disputed factual findings underlying a suppression order for clear error. *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007).

Incident to a lawful arrest, officers who "have probable cause to believe that evidence of criminal activity is on [a] premises" may freeze that premises "to preserve the status quo while others, in good faith, are in the process of obtaining a warrant." *Segura v. United States*, 468 U.S. 796, 798, 809, 104 S. Ct. 3380, 3382, 3387 (1984).

Probable cause

Probable cause exists when there is "a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332

(1983)). Whether a CRI has provided information that establishes probable cause depends on the totality of the circumstances, "including the credibility and veracity of the informant." *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999).

Previously reliable informants are more likely to be reliable. *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998) (citing *Wiley*, 366 N.W.2d at 268). Police corroboration of details that the CRI provides weighs in favor of probable cause. *Id.* (citing *Wiley*, 366 N.W.2d at 269). Here, the CRI had already provided reliable information leading to several controlled buys. In addition, the CRI identified Jerald Drewes as a drug dealer, Robert Fuller as the source of the drugs, and the pawn shop as their storage location. Officers corroborated that information when they followed Drewes as he took the controlled-buy money to Robert Fuller and met him inside the pawn shop.[1] Police conducting a controlled purchase of narcotics may infer that drugs are stored in a building when an informant gives the buy money to a suspected dealer who enters that building and exits a short while later with drugs. *State v. Hawkins*, 278 N.W.2d 750, 751–52 (Minn. 1979). Here, after Robert Fuller exited the pawn shop, he was arrested carrying methamphetamine. Although he also went inside the apartment complex before his arrest, probable cause depends on the totality of the circumstances. *Munson*, 594 N.W.2d at 136. Under the totality of the circumstances, namely the CRI's

[1] Appellant argues that the district court's finding that the meeting took place inside the pawn shop is clearly erroneous. "A [district] court's [factual] finding is erroneous if this court, after reviewing the record, reaches the firm conviction that a mistake was made." *State v. Berger*, 412 N.W.2d 16, 19 (Minn. App. 1989) (quotation omitted). On careful review of the record, including officer testimony and an arrest report in the stipulated-facts packet, we are persuaded that there was an adequate basis for the district court to find that the meeting took place inside the pawn shop.

reliability, the corroborated tip that Robert Fuller was storing methamphetamine in the pawn shop, and the meeting between Fuller and Drewes in the pawn shop, the police established probable cause that the pawn shop contained evidence of a crime.

Reason to fear the imminent destruction of evidence

To freeze a premises lawfully, officers must reasonably fear the imminent destruction of evidence inside. *Illinois v. McArthur*, 531 U.S. 326, 337, 121 S. Ct. 946, 950 (2001). Police may have "good reason to fear" the imminent destruction of evidence when a person who witnessed officers nearby has access to a location believed to contain a drug stash and an interest in destroying the drugs. *Id.* Here, Drewes and Robert Fuller were arrested across the street from the pawn shop—a suspected hub of drug distribution. On this record, we agree with the district court's determination that it was reasonable for officers to suspect that an employee of the pawn shop might also be involved in drug distribution, become aware of the nearby arrest, and destroy evidence if given the chance.

Because officers reasonably feared imminent destruction of the evidence that they had probable cause to believe was inside the pawn shop, we conclude that freezing the pawn shop pending the issuance of a search warrant was constitutional.

II

Appellant also argues that the officers did not have a reasonable, articulable suspicion that he was engaged in criminal activity. Thus, the district court erred in upholding the *Terry* search.

When no facts are in dispute and a district court's decision on the suppression of evidence is a question of law, we review the suppression order de novo. *Othoudt*, 482 N.W.2d at 221.

The Fourth Amendment guarantees 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. A warrantless seizure is unreasonable unless it falls into a recognized exception. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007).

Without a warrant, "police may stop and frisk a person when (1) they have a reasonable, articulable suspicion that a suspect might be engaged in criminal activity and (2) the officer reasonably believes the suspect might be armed and dangerous." *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968)), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993). A valid *Terry* stop-and-frisk proceeds in two steps. The first is a valid investigative seizure, which requires an officer to have a reasonable, articulable suspicion that a person is engaging in criminal activity. *Terry*, 392 U.S. at 21, 88 S. Ct. at 880. The second is a valid frisk, which requires that, during the investigative seizure, circumstances objectively created a reasonable concern for officer safety. *Id.* at 30, 88 S. Ct. at 1184–85.

Validity of the investigative seizure

Officers conducting a warrantless investigatory seizure "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. We consider the events "leading up to the stop or search" to decide whether the totality of the

circumstances, "viewed from the standpoint of an objectively reasonable police officer, amount[s] to reasonable suspicion" of criminal activity. *State v. Martinson*, 581 N.W. 2d 846, 850 (Minn. 1998) (quotation omitted).

Because Drewes and Robert Fuller met inside the pawn shop, police already had probable cause to suspect that it was a distribution hub for methamphetamine. It was reasonable to infer that an employee of the pawn shop, such as appellant, might therefore be engaged in drug distribution. Police had a reasonable, articulable suspicion that appellant might be engaged in drug-related criminal activity, and the investigatory seizure was thus valid.[2]

Validity of the frisk for weapons

Police may subject a person under valid investigative detention to a pat-down search for weapons if objective circumstances create a reasonable concern for officer safety. *Terry*, 392 U.S. at 30–31, 88 S. Ct. at 1884–85; *Dickerson*, 481 N.W.2d at 843. Appellant worked in a pawn shop containing many guns, some uncased. He acted strangely, refused to make eye contact, and rested his hand on an open drawer, the contents of which the officers could not see. Officers testified that, based on their experience, the situation "just wasn't right," appellant seemed to be hiding something,

[2] Appellant argues that officers based their decision to search him out of concern for their safety alone, without suspecting him of any particular criminal activity. But by the time officers feared for their safety, appellant had already been detained on the reasonable and articulable suspicion that he might be involved in drug distribution. When a person has already been detained on a "valid reasonable basis," "officer safety is a paramount interest" and "a frisk will often be appropriate without additional individual articulable suspicion." *State v. Varnado*, 582 N.W.2d 886, 891 (Minn. 1998).

and they feared for their safety. In these circumstances, the officers reasonably believed that appellant might be armed and dangerous.

Because the police had a reasonable, articulable suspicion that appellant was engaged in criminal activity and a reasonable belief that he might be armed and dangerous, we conclude that the *Terry* search of appellant was constitutional.

Affirmed.