**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A08-1710**

State of Minnesota,
Respondent,

vs.

William A. Warr,
Appellant.

**Filed November 10, 2009**
**Affirmed**
**Klaphake, Judge**

Hennepin County District Court
File No. CR-07-002289

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, C-2000 Government Center, 300 S. 6th Street, Minneapolis, MN 55487 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Lydia M. Villalva Lijo, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

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

**KLAPHAKE**, Judge

William A. Warr appeals from his convictions for third-degree controlled substance crime, Minn. Stat. § 152.023. subd. 1(1), subd. 3(a) (2006), and carrying a weapon without a permit, Minn. Stat. § 624.714, subd. 1a (2006), arguing that the district court erred by refusing to suppress evidence discovered during a warrantless search of his person. Because the police officer had an objectively reasonable basis to seize appellant and search him, we affirm.

## D E C I S I O N

We review the district court's suppression orders to determine whether the district court erred. *State v. Flowers*, 734 N.W.2d 239, 247 (Minn. 2007). "When the facts are not in dispute, our review is de novo, and we must determine whether the police articulated an adequate basis for the search or seizure at issue." *Id.*

Although warrantless searches and seizures are per se unreasonable under the United States and Minnesota Constitutions, U.S. Const. amend. IV and Minn. Const. art I, § 10, there are certain limited exceptions to this rule. At issue in this matter is whether the police officer who stopped and searched appellant had a reasonable, articulable suspicion that appellant might be engaged in criminal activity and might be armed and dangerous, providing a basis for an investigatory stop and pat search. *See Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968); *Flowers*, 734 N.W.2d at 250-51. When we consider whether a police officer has such a reasonable, articulable suspicion, we do so in light of the "special training of police officers [that] may lead them to arrive at inferences and

deductions that might well elude an untrained person." *State v. Askerooth*, 681 N.W.2d 353, 369 (Minn. 2004) (quotation omitted). "The reasonable suspicion standard is not high . . . [but] requires at least a minimal level of objective justification for making the stop." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008).

Here, Officer Charles Herzog, who responded to a 911 call reporting an assault, talked with the victim, who stated that the assailant had left, but one of the persons "involved" was standing across the street at a bus stop and pointed out appellant by his clothing. Herzog briefly and fruitlessly looked for the assailant, returning to the bus stop within minutes. Although appellant had left the bus stop, Herzog could still see him walking away. At this point, Herzog had an objective belief that appellant was involved in an assault. When Herzog pulled his squad car alongside appellant and asked to speak with him, appellant refused and continued walking, behavior that Herzog found suspicious in light of his 19 years of law enforcement experience. When Herzog again pulled alongside appellant and attempted to question him, appellant turned his back on him, faced a blank wall, and put his hands in his pockets. Herzog found this behavior to be extremely suspicious; further, he feared that appellant might be armed because he put his hands in his pockets. Herzog conducted a brief pat search of appellant's outer clothing, feeling what appeared to be a handgun.

In a case involving similar facts, we affirmed the district court's refusal to suppress evidence recovered after a pat search. *In re Welfare of M.D.R.*, 693 N.W.2d 444, 447-448 (Minn. App. 2005), *review denied* (Minn. June 28, 2005). There, an off-duty officer, who was required to be in uniform and monitoring the police radio, heard an

"officer needs help" call, a call of high priority. *Id.* at 447. The officer heard a description of two suspects, one of whom was wearing a red jacket, leaving the scene in close proximity to his location; two people matching the description walked by him and he stopped the person wearing a red jacket. *Id.* The officer performed a pat search for his safety and discovered an illegal weapon. *Id.* at 448. We concluded that the officer had a reasonable articulable suspicion of possible criminal activity, given the totality of the circumstances, and also had an "objective articulable basis" justifying a pat search. *Id.* at 450.

When a police officer observes unusual conduct that raises a reasonable suspicion of criminal activity and that leads the officer to conclude that the suspect might be armed, a limited pat search of the suspect's outer clothing is permissible. *Terry*, 392 U.S. at 30, 88 S. Ct. at 1883-84. Based on the record before us, Officer Herzog provided an objective basis for a reasonable suspicion that appellant might be involved in criminal activity and might be armed. We therefore conclude that the district court did not err by refusing to suppress the evidence discovered during the warrantless search of appellant's person.

**Affirmed.**