STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1897

State of Minnesota,
Respondent,

vs.

Terrence Douglas Bernard,
Appellant.

Filed December 29, 2009
Affirmed
Stauber, Judge

Ramsey County District Court
File No. K908905

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

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, Suite 315, Ramsey County Government Center West, 50 West Kellogg Boulevard, St. Paul, MN 55102 (for respondent)

Marie Wolf, Interim Chief Public Defender, Jessica Merz Godes, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Stauber, Presiding Judge; Toussaint, Chief Judge; and Crippen, 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

STAUBER, Judge

On appeal from his conviction of possession of a firearm by an ineligible person, appellant argues that the district court erred in denying his suppression motion because police failed to articulate a particularized and objective basis for suspecting him of criminal activity before seizing him. We affirm.

FACTS

On March 9, 2008, at approximately 11:30 p.m., Officers Jake Peterson and Genevieve Haigh were on patrol in a squad car travelling east on Milford Street in a high-crime area of St. Paul. When they reached the intersection of Milford and Woodbridge Streets, two to three blocks west of Rice Street, the officers noticed a Ford Bronco ahead of them facing east on Milford Street. The vehicle was "parked" at a stop sign at the corner of Milford and Rice. Two men were standing next to the vehicle. One of the men, later identified as appellant Terrence Douglas Bernard, was standing next to the driver's side window talking to the driver. The other man stood a short distance behind appellant and appeared to the officers to be watching for other people or vehicles.

The officers slowly approached the vehicle in their squad car without turning on their emergency lights. When they came within a block of the scene, appellant and the other man standing in the street noticed the squad car and immediately began walking away from the vehicle. The vehicle also made a quick right turn onto Rice Street and drove away. Appellant turned west when he reached the sidewalk on the north side of Milford Street and began walking in the direction of the squad car. The other man

continued in a different direction. The officers made a U-turn at the Milford-Rice intersection so that the men were both in front of them, then exited the squad car. Officer Haigh ordered appellant to stop, face away from her, and put his hands on his head with his fingers interlocked. Appellant obeyed the command. As Officer Haigh grabbed appellant's clasped hands, she noticed a handgun sticking out of his waistband. Officer Haigh then seized the gun and placed appellant under arrest.

After appellant was placed in the back of the squad car, Officer Peterson asked appellant where he resided because his identification indicated that he was from another state. Appellant provided his address and then volunteered, without further questioning,[1] that he picked up the gun "by accident" near a crack house, and that he was planning to sell it to the man in the vehicle. Appellant was subsequently charged with possession of a firearm by an ineligible person.

Prior to trial, appellant moved to suppress the gun found on his person and the statements he made after his arrest on the basis that the investigatory stop was not supported by reasonable, articulable suspicion. A contested omnibus hearing was held on the motion, and Officers Haigh and Peterson both testified. The officers claimed that they decided to stop appellant because they believed he may have been involved in a drug deal with the person inside the vehicle. The officers cited several reasons for their suspicion, including that: (1) they came across the scene late at night in a high crime area; (2) the vehicle and men were positioned in a manner suggesting that a drug deal

[1] Officer Peterson did not read appellant his *Miranda* rights prior to asking for appellant's address because he was only seeking basic identification information. Appellant does not allege that his *Miranda* rights were violated.

might be taking place; (3) one of the men standing next to the vehicle seemed to be acting as a lookout; and (4) the men and vehicle immediately dispersed after noticing the approaching squad car.

The district court denied the motion to suppress based on the reasons articulated by the officers. Appellant then agreed to a stipulated-facts trial, and was found guilty of the charged offense. This appeal followed.

D E C I S I O N

Appellant contends that the district court erred in denying his motion to suppress because the officers did not have a legal basis for executing an investigatory stop. "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 district court's findings of fact are reviewed for clear error. *State v. Lee*, 585 N.W.2d 378, 383 (Minn. 1998).

The United States and Minnesota Constitutions guarantee individuals the right to be free from unreasonable searches and seizures. U.S. Const. amend IV; Minn. Const. art. I, § 10. But "an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion [of] criminal activity." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675 (2000). "Reasonable suspicion must be based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quotation omitted). The Minnesota

Supreme Court has recognized that "the reasonable suspicion standard is not high." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). "The officer may justify his decision to seize a person based on the totality of the circumstances and may draw inferences and deductions that might elude an untrained person." *Harris*, 590 N.W.2d at 99 (quotation omitted). However, the officer must "be able to articulate something more than an inchoate and unparticularized suspicion or hunch." *State v. Martinson*, 581 N.W.2d 846, 850 (Minn. 1998) (quotations omitted).

Appellant argues that police did not have a sufficient basis to stop him because there were innocent explanations for his suspicious conduct, and none of the activity observed by the officers was illegal. He contends that he was seized solely because he was present in a high-crime area at night. *See State v. Varnado*, 582 N.W.2d 886, 890 (Minn. 1998) (stating that a person's mere presence in a high-crime area is insufficient to establish reasonable suspicion).

Appellant is correct that much of the conduct observed by the officers was innocuous. But the proper inquiry is not whether police officers observed the commission of a crime, but whether they were able to articulate reasonable explanations for their suspicion of wrongdoing that justified detention of the suspect. *Wardlow*, 528 U.S. at 123, 120 S. Ct. at 675–76.

Here, the officers identified several suspicious circumstances that led them to believe that criminal activity was afoot, including: (1) the men's presence in a high-crime area at night; (2) the positioning of the group in a manner suggesting that a drug deal might be taking place; and (3) the possibility that one of the men standing next to the

vehicle was acting as a lookout. These circumstances adequately support the district court's conclusion that the officers had reasonable, articulable suspicion to stop appellant. *See id.* at 124, 120 S. Ct. at 676 (noting that evasive conduct or flight can create reasonable suspicion); *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (noting that presence in high-crime area, when combined with other suspicious conduct, may be sufficient to justify a stop); *State v. Lande*, 350 N.W.2d 355, 357–58 (Minn. 1984) (indicating that the time of day is a relevant consideration in determining whether reasonable suspicion existed). We also note that even if the conduct the officers observed was "ambiguous and susceptible of an innocent explanation," as appellant contends, the officers were still entitled to stop him "to resolve the ambiguity." *See Wardlow*, 528 U.S. at 125, 120 S. Ct. at 677. Accordingly, we conclude that the district court did not err in denying appellant's suppression motion.

Affirmed.