STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2017

State of Minnesota,
Respondent,

vs.
Carol Ann Graves,
Appellant.

Filed September 14, 2010
Affirmed
Collins, Judge[*]

Beltrami County District Court
File No. 04-CR-08-658

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Timothy R. Faver, Beltrami County Attorney, Bemidji, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Lydia Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

COLLINS, Judge

Appellant Carol Ann Graves challenges her conviction of fifth-degree controlled-substance crime, arguing that the district court erred by denying her motion to suppress evidence seized pursuant to her arrest. Because law-enforcement officers had reasonable suspicion to justify the investigatory stop of appellant, and it is not shown that the officers unlawfully expanded the scope and duration of the stop, we affirm.

FACTS

Shortly after midnight on February 2, 2008, a state patrol officer noticed a car parked on the shoulder of the highway and observed two individuals fighting nearby. After stopping to investigate, the officer saw that the individuals, a man and a woman, had blood on their faces. Each of them reported being assaulted by the other. The officer also spoke with a man sitting in the front passenger seat whose speech was slurred and whose breath bore a strong odor of alcohol. The passenger claimed ownership of the car, but the officer determined that it was registered to a relative of the passenger.

Three Bemidji police officers arrived at the scene to provide assistance. One of them testified that all three individuals at the scene appeared to be intoxicated and were talking loudly. Two of the individuals informed the officers that the female driver of the car, later identified as appellant, had left the scene on foot. The officers found footprints in the snow leading to a nearby convenience store, the only business in the area, other than a motel, that was open at the time.

One of the officers entered the store and was informed by several people that if he was looking for a woman covered in snow, she had just gone into the restroom. The officer approached the door of the women's restroom, knocked, and announced, "Police." After a few seconds, the officer entered the restroom and directed appellant to come out of the stall, and she complied. The officer identified appellant and asked why she had left the scene, but appellant did not answer. The officer contacted a dispatcher, and the ensuing warrants check revealed an outstanding warrant for appellant's arrest. The officer arrested appellant and searched her person pursuant to the arrest, finding a single blue pill of hydrocodone inside a cigarette package.

Appellant was charged with fifth-degree controlled-substance crime (possession of hydrocodone), in violation of Minn. Stat. § 152.025, subd. 2(1) (2006). Appellant moved the district court to suppress the evidence seized from her person on the ground that the officer lacked probable cause to believe that she had committed a crime when he ordered her out of the restroom stall. Following an omnibus hearing, the district court denied the motion. Appellant waived her right to a jury trial and the case was submitted to the district court on stipulated facts pursuant to Minn. R. Crim. P. 26.01, subd. 3. The district court found appellant guilty as charged. This appeal followed.

D E C I S I O N

I.

Appellant argues that the officer's investigatory stop of appellant was unlawful because the officer lacked a particularized and objective basis for suspecting appellant of

criminal activity. And because the stop was unlawful, appellant contends, evidence seized pursuant to her subsequent arrest should be suppressed.

In reviewing pretrial orders to suppress or admit evidence, this court may independently review the facts and determine whether the district court erred as a matter of law. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). This court reviews the legality of a limited investigatory stop and questions of reasonable suspicion de novo. *State v. Syhavong*, 661 N.W.2d 278, 281 (Minn. App. 2003). But we review a district court's factual findings regarding investigatory stops for clear error. *State v. Capers*, 451 N.W.2d 367, 370 (Minn. App. 1990), *review denied* (Minn. Apr. 25, 1990).

Limited investigatory stops are subject to the prohibitions against unreasonable searches and seizures found in the Fourth Amendment to the United States Constitution and article I, section 10 of the Minnesota Constitution. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). A limited investigatory stop, or *Terry* stop, is lawful if there is "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Yang*, 774 N.W.2d 539, 551 (Minn. 2009) (quotation omitted); *see generally Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968) (setting forth the rationale and tests for initiating and carrying out limited investigatory stops). The factual basis needed to justify an investigatory stop is "minimal." *Knapp v. Comm'r of Pub. Safety*, 610 N.W.2d 625, 628 (Minn. 2000).

A reviewing court must analyze the testimony of officers in order to determine whether, as a matter of law, their observations provided an adequate basis for a stop. *Yang*, 774 N.W.2d at 551. In assessing whether there is reasonable suspicion, officers

may make inferences that elude an untrained person, but a stop must not be based on a mere hunch. *State v. Cripps*, 533 N.W.2d 388, 391-92 (Minn. 1995). We apply a totality-of-the-circumstances test to determine if the officers had reasonable suspicion to justify the stop, and may consider "the officer's general knowledge and experience, the officer's personal observations, information the officer has received from other sources, the nature of the offense suspected, the time, the location, and anything else that is relevant." *Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987).

Here, the totality of the circumstances supports the district court's conclusion that the officer had reasonable, articulable suspicion to justify seeking out and confronting appellant. The officer reasonably suspected that appellant was the driver, or at least a passenger, of the car because: (1) two of the individuals at the scene informed him that the driver had left on foot; (2) the officers determined that footprints from the car led to the convenience store; and (3) patrons at the convenience store informed the officer that a woman covered in snow was in the restroom. And the officer had reasonable suspicion to believe that the driver of the car, or another passenger, was involved in criminal activity because: (1) an officer observed a physical fight taking place near the car and observed two individuals with blood on their faces; (2) an officer observed that the individuals at the scene appeared intoxicated and were speaking loudly; and (3) appellant had left the scene on foot, venturing out through the fallen snow alone in the midnight hour. *See State v. Lemieux*, 726 N.W.2d 783, 789 (Minn. 2007) (stating that when evaluating propriety of an officer's search or seizure, "the officer who conducts the search [or seizure] is imputed with knowledge of all facts known by other officers involved in the

investigation, as long as the officers have some degree of communication between them."). These facts are sufficient to "warrant a [person] of reasonable caution in the belief that the [stop] was appropriate." *See Terry*, 392 U.S. at 22, 88 S. Ct. at 1880 (quotation omitted) (setting forth objective standard for determining if stop was justified).

Appellant argues that the officer did not have reasonable suspicion to believe that she had committed a crime, and thus the stop was unlawful. But the officer did not need to know that appellant had committed a crime to justify the intrusion. *See Yang*, 774 N.W.2d at 551 ("[A]n officer is not required to know that a person committed a crime in order to perform an investigatory stop."); *see also Illinois v. Wardlow*, 528 U.S. 119, 125, 120 S. Ct. 673, 677 (2000) (providing that conduct justifying a stop may be "ambiguous and susceptible of an innocent explanation"). An officer may stop a person present at the scene of a recently committed crime of violence in order to "freeze" the situation for investigation purposes. *Wold v. State*, 430 N.W.2d 171, 174 (Minn. 1988) (quotation omitted); *Capers*, 451 N.W.2d at 371 ("[W]here a crime may have been committed and a suspect or important witness is about to disappear, it seems irrational to deprive the officer of the opportunity to 'freeze' the situation for a short time, so that he may make inquiry and arrive at a considered judgment about further action to be taken. . . ." (quotation omitted)).

Here, the officer's stop of appellant to investigate was justified. The officer testified that he sought out and confronted appellant because he believed that she would have information about the assaults that took place near the car and to ensure her safety. The three individuals at the scene appeared to be intoxicated. The officer noted that

appellant had walked through deep snow in a wooded area in the dead of night, and wanted to ensure that she was safe. *See Appelgate*, 402 N.W.2d at 108 (providing that in reviewing an officer's reasonable-suspicion determination, this court may consider the location, time, circumstances, the officer's personal observations, and "anything else that is relevant"). We conclude that the district court did not err in its application of law by denying appellant's motion to suppress the evidence because the investigatory stop of appellant was justified by reasonable, articulable suspicion.

II.

Appellant argues that even were we to determine that the officer had reasonable suspicion to intrude upon her liberty initially, the evidence should still be suppressed because the officer unlawfully expanded the scope and duration of the stop by pursuing the warrants check. Appellant failed to raise this issue for consideration by the district court; it may thus be deemed waived on appeal. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (providing that an appellate court need not consider matters not argued to and considered by the district court below). But we nonetheless address the issue and conclude that appellant's argument fails on the merits. *See* Minn. R. Civ. App. P. 103.04 (providing that this court has discretion to review any issue on appeal).

The test of reasonableness under the Fourth Amendment and the Minnesota Constitution requires that an investigatory stop be limited in scope and duration, lasting only long enough to effectuate the purpose of the stop. *State v. Wiegand*, 645 N.W.2d 125, 135-36 (Minn. 2002). The United States Supreme Court and Minnesota courts have refused to adopt a bright-line rule for the length of an investigative stop. *State v.*

Blacksten, 507 N.W.2d 842, 846 (Minn. 1993). Generally, law enforcement may continue the detention as long as reasonable suspicion remains and the officers act diligently and reasonably in pursuing the investigation. *State v. Moffatt*, 450 N.W.2d 116, 119 (Minn. 1990). In reviewing whether officers acted diligently and reasonably, a court should not engage in "unrealistic second-guessing," and should look to the facts and circumstances of the case. *Id*.

As noted above, appellant failed to raise the issue before the district court, and the record was not developed to establish the duration of appellant's detention before the officer learned of the outstanding warrant and arrested her. Citing *State v. Johnson*, 645 N.W.2d 505 (Minn. App. 2002), appellant simply asserts that the officer unlawfully expanded the scope of the stop when he ran a warrants check. There, we held that it was unlawful for officers to briefly detain and perform a warrants check on Johnson, a backseat passenger, during an investigation to determine whether the driver was properly driving with a learner's permit. *Johnson*, 645 N.W.2d at 510. Here, unlike in *Johnson*, the officer reasonably believed that appellant was the driver of the car, and that she may have witnessed, if not participated in, the apparent assaults that had taken place. She was not detained "simply because [s]he was a passenger in the back seat of a vehicle." *See id*. at 511.

Moreover, it is standard procedure for officers to identify a suspect and check for any outstanding warrants in the course of an investigation. *See State v. Schinzing*, 342 N.W.2d 105, 109 (Minn. 1983) (providing that it is standard procedure for officers to request stopped drivers to show a license and "[a]ny rule that in certain stop cases police

cannot request the driver's license would create unnecessary confusion among the police."). Absent a showing that the officer failed to act diligently and reasonably in performing the warrants check, we conclude that appellant's argument that the officer unlawfully expanded the scope and duration of the investigatory stop is without merit.

Affirmed.