STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1687

State of Minnesota,
Respondent,

vs.

Darius Ahmadd Olson-Baker,
Appellant.

Filed October 21, 2024
Affirmed
Segal, Chief Judge

Hennepin County District Court
File No. 27-CR-23-3504

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Shannon M. Harmon, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Segal, Chief Judge; and Kirk, Judge.*

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

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this direct appeal, appellant challenges his judgment of conviction of unlawful possession of a firearm following a trial to the court based on stipulated evidence pursuant to Minn. R. Crim. P. 26.01, subd. 4.[1] Appellant argues that his conviction must be reversed because the district court erred in denying his pretrial motion to suppress evidence of a firearm discovered by police after what appellant alleges was an unlawful search. We affirm.

FACTS

At approximately 10:00 p.m. on February 11, 2023, a patrol officer with the St. Louis Park Police Department was driving southbound on Highway 169 when he saw a car that "was completely off the roadway, as if it had slid off and crashed."[2] The officer activated his rear emergency lights and stopped to investigate what had caused the crash and to offer aid. The officer "observed that the driver . . . of the vehicle ducked behind the car as [the officer] was approaching." The driver then "pop[ped] up from near the front-driver-side tire" and approached the officer. The driver, who was later identified as appellant Darius Ahmadd Olson-Baker, remained out of sight for 19 seconds, as can be seen on squad-car video footage of the interaction.

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[1] This rule provides a mechanism for defendants to obtain appellate review of a pretrial ruling that the parties agree "is dispositive of the case, or . . . makes a contested trial unnecessary." Minn. R. Crim. P. 26.01, subd. 4.

[2] Unless otherwise noted, the quotes in this section are taken from the officer's testimony at the pretrial hearing on the motion to suppress.

Olson-Baker's unusual movements caused the officer "concern[] that evidence was being destroyed or hidden." The officer also had safety concerns based on Olson-Baker's behavior in ducking behind the car and the fact that Olson-Baker was wearing a fanny pack diagonally across his chest because, "[t]hrough training [and] experience, [the officer] kn[e]w that firearms are frequently worn in similar chest packs." Additionally, although the area was a highway and there were no houses nearby, the officer considered "it overall a high crime area." The officer conducted a pat-down search of Olson-Baker for weapons; the officer felt a marijuana grinder in the fanny pack but no weapons.

During the pat-down search, the officer observed that the fanny pack was unzipped and that Olson-Baker's hands were wet, which suggested to the officer, based on his training and experience, that Olson-Baker may have been "digging through the snow" and "hastily trying to hide evidence or contraband," possibly including a firearm. The officer then handcuffed Olson-Baker and placed him in the back of the squad car for officer safety while conducting a search of the area behind the side of the car. A firearm was found "10 to 15 feet off the driver side of the vehicle." The officer believed that the firearm had been placed there recently because it was on top of the snow and there was no rust on the firearm or snow or foliage on top of it. Less than two-and-a-half minutes passed between the time that Olson-Baker was placed in the back of the squad car and the discovery of the firearm.

Respondent State of Minnesota charged Olson-Baker with unlawful possession of a firearm. Olson-Baker moved to suppress evidence of the firearm, arguing that the firearm was found as the result of an unlawful pat search. The St. Louis Park officer testified at the motion hearing. In a written order, the district court credited the officer's testimony

and denied the motion to suppress. The district court reasoned that, "[i]n light of the totality of [Olson-Baker's] behavior, the officer believed [Olson-Baker] may have removed a gun from his fanny pack and hidden it in the snow where it would still pose a danger to the officer and others." The district court thus determined that the officer's suspicion that Olson-Baker was armed was justified, and that Olson-Baker's "detention—both in and out of the squad car—was constitutionally permissible."

The parties agreed that the ruling on the pretrial motion to suppress was dispositive and Olson-Baker agreed to submit the matter for a court trial based on stipulated evidence pursuant to Minn. R. Crim. P. 26.01, subd. 4. The stipulated evidence included the results of DNA testing from swabs of the firearm. The testing showed that there was a mixture of DNA from at least four individuals, but that the major DNA profile matched Olson-Baker. The district court found Olson-Baker guilty and sentenced him to 60 months in prison.

DECISION

On appeal, Olson-Baker challenges the denial of his motion to suppress evidence of the firearm, arguing that the officer lacked reasonable, articulable suspicion to conduct a search. The state opposes that argument, but also asserts—for the first time on appeal—that Olson-Baker abandoned the firearm because it was found on public land, 10 to 15 feet away from the driver's side of Olson-Baker's car. The state argues that abandonment provides an alternative ground for affirming the district court's denial of the motion to suppress, independent of whether the officer had reasonable, articulable suspicion. Olson-Baker maintains that it is improper for the state to assert this alternative argument for the first time on appeal. In our analysis, we address first the state's abandonment argument.

I. Because law enforcement located the firearm in a public area, independent of any search of Olson-Baker, the record supports that the firearm was abandoned and we thus discern no error in the district court's denial of Olson-Baker's motion to suppress.

The state argues, for the first time on appeal, that the district court's denial of Olson-Baker's motion to suppress evidence of the firearm should be affirmed because Olson-Baker abandoned the firearm before any search or seizure occurred. "When property is abandoned . . . the owner no longer has a reasonable expectation of privacy and the exclusionary rule will not apply." *State v. Askerooth*, 681 N.W.2d 353, 370 (Minn. 2004). "But, if the property is abandoned because of an unlawful act by police officers, it will not be admissible as evidence." *Id.*

It is undisputed that the state did not raise this argument below. Olson-Baker argues that this issue is "outside the scope of this Court's review" and emphasizes that the state agreed that the pretrial ruling on the motion to suppress was dispositive. But the procedure set out in Minn. R. Crim. P. 26.01, subd. 4, requires an agreement only that "the court's ruling on a specified pretrial issue is dispositive of the case,"—in this case, whether the evidence of the firearm should be suppressed—not an agreement concerning the district court's rationale for that ruling. In arguing abandonment, the state maintains its position that the district court properly denied the motion to suppress, and that the denial should be affirmed on appeal. Thus, the state's argument does not contradict its stipulation that the pretrial ruling was dispositive.

In *State v. Grunig*, the supreme court held: "A respondent can raise alternative arguments on appeal in defense of the underlying decision when there are sufficient facts

in the record for the appellate court to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted." 660 N.W.2d 134, 137 (Minn. 2003); *see also State v. Brooks*, 838 N.W.2d 563, 568 n.2 (Minn. 2013) (citing *Grunig* and determining that the state's argument that the defendant consented to the search was properly before the court despite not being raised or addressed in district court); *State v. Diede*, 795 N.W.2d 836, 848 n.6 (Minn. 2011) (citing *Grunig* and explaining "a respondent may raise new arguments on appeal"). Because the abandonment argument is not inconsistent with the parties' agreement under Minn. R. Civ. P. 26.01, subd. 4, we will consider the argument.

The record in this case demonstrates that the firearm was laying in the snow 10 to 15 feet away from the driver's side of Olson-Baker's car—the side where Olson-Baker had been crouching—and was not in Olson-Baker's personal possession when the officer searched or seized Olson-Baker. Moreover, Olson-Baker was in the officer's sight or was inside the officer's squad car from the time Olson-Baker first reappeared from behind the side of his car to the time the firearm was found by the officer. It is therefore reasonable to conclude that the firearm was discarded by Olson-Baker before the officer initiated any type of search, and that the firearm thus was not discarded "because of [any alleged] unlawful act by police officers." *Askerooth*, 681 N.W.2d at 370.

In *City of St. Paul v. Vaughn*, the supreme court held: "Where the presence of the police is lawful and the discard occurs in a public place where the defendant cannot reasonably have any continued expectancy of privacy in the discarded property, the property will be deemed abandoned for purposes of search and seizure." 237 N.W.2d 365,

371 (Minn. 1975) (footnotes omitted). And as previously stated, "courts generally have held that it does not by itself constitute a seizure for an officer to simply walk up and talk to a person standing in a public place or to a driver sitting in an already stopped car." *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980). Based on the circumstances described above, we agree with the state that Olson-Baker abandoned the firearm in a public place—the side of the highway—prior to the pat search of Olson-Baker by the officer. We thus discern no error in the district court's denial of Olson-Baker's motion to suppress.

II. The district court did not err in concluding that the search was constitutionally permissible.

Because the theory presented to the district court by the parties concerning admissibility of the firearm evidence was based on the legality of the search of Olson-Baker's person, we also analyze whether the search was lawful. The United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "A warrantless search . . . is generally unreasonable unless it falls within an exception to the Fourth Amendment's warrant requirement." *State v. Lemert*, 843 N.W.2d 227, 230 (Minn. 2014). One such exception permits an officer to "conduct a protective pat search of a person's outer clothing so long as the officer has a reasonable, articulable suspicion that the person whom the officer has lawfully detained may be armed and dangerous." *Id.* (citing *Terry v. Ohio*, 392 U.S. 1, 26-27 (1968)). "The protective pat search must be strictly limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby." *Id.* (quotations omitted). "The officer need not be absolutely certain that the individual is

armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Terry*, 392 U.S. at 27.

This court reviews questions of reasonable suspicion de novo. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). But we review the district court's underlying factual findings for clear error. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). "Reasonable suspicion requires more than a mere 'hunch' but is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause." *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021). In determining whether the reasonable-suspicion standard is met, this court considers the totality of the circumstances, *id.*, and evaluates those circumstances from the perspective of a trained police officer, whose inferences may "elude an untrained person." *Lemert*, 843 N.W.2d at 230 (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)).

We begin our analysis by noting that this case does not involve a stop of Olson-Baker's car. The car was already stopped off the side of the highway and it appeared to the officer as if the car might have slid and been involved in an accident. Olson-Baker does not contest the propriety of the officer's conduct in stopping to see what had occurred and to offer assistance. *See Overvig v. Comm'r of Pub. Safety*, 730 N.W.2d 789, 793 (Minn. App. 2007) (noting that officers have a "duty to make a reasonable investigation of vehicles parked along roadways to offer such assistance as might be needed and to inquire into the physical condition of persons in vehicles" (quotation omitted)), *rev. denied* (Minn. Aug. 7, 2007); *see also Vohnoutka*, 292 N.W.2d at 757 (noting that "courts generally have

held that it does not by itself constitute a seizure for an officer to simply walk up and talk to a person standing in a public place or to a driver sitting in an already stopped car"); *Illi v. Comm'r of Pub. Safety*, 873 N.W.2d 149, 152 (Minn. App. 2015) (citing this principle of *Vohnoutka*).

But the officer's actions of pat searching and temporarily detaining Olson-Baker require that the officer had a reasonable, articulable suspicion that his safety or the safety of others was at risk and that Olson-Baker may have been engaged in criminal activity. *Lemert*, 843 N.W.2d at 230. Olson-Baker maintains that the basis articulated by the officer for his suspicions fails to satisfy this constitutional standard. He points out that the officer had less than three years of experience and that Olson-Baker's actions in ducking behind the car could have been for totally innocent reasons. Olson-Baker posits, for example, that he might have ducked behind the car because he wanted to ascertain whether the driver of the car that had pulled off the road next to him was a helper or a threat. He also suggests that his hands could have been wet because he was digging in the snow around a stuck tire to determine if he needed a tow. But these suggestions do not negate the reasonableness of the officer's articulated suspicions.

The district court here credited the officer's testimony, and we defer to a district court's credibility determinations. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012). The officer testified that he had been involved in thousands of traffic stops and roadside accidents and had "never seen a motorist attempt to conceal their person from [him] in that manner." *See State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (noting that police officers may draw reasonable inferences "based on their training and experience").

Moreover, Olson-Baker ducked behind the car, out of view, after the squad car had pulled over, which would seem to undermine Olson-Baker's suggestion that he was digging through the snow to ascertain whether a tow was needed.

Olson-Baker further argues that the fact that Olson-Baker was wearing a fanny pack is not suspicious conduct. He cites in his appellate brief an article in The New York Times commenting on the fact that fanny packs have made a major fashion comeback in recent years. While we agree that wearing a fanny pack is not of itself suspicious, the district court's ruling was not based on the fact that Olson-Baker was wearing a fanny pack, but that the pack was unzipped and open after Olson-Baker reappeared as well as the officer's testimony that, in his experience, firearms are commonly carried in fanny packs worn across a person's chest. In addition, the squad-car video depicts Olson-Baker appearing to shake water off his hands as the officer approaches.

The officer here articulated specific facts to support his suspicion—Olson-Baker's unusual behavior in ducking behind the car for 19 seconds after the officer's approach, the unzipped fanny pack, and the wet hands. These facts support the officer's suspicion that, after the officer had arrived, Olson-Baker ducked behind the car so that he could conceal a weapon or other contraband. And notably, the officer articulates this very suspicion in real time during the incident as captured in the video footage submitted to the district court. This lends added support to the district court's finding that the officer's testimony was credible.

Olson-Baker argues that, even if the officer's actions were permissible under the Fourth Amendment of the United States Constitution, they were impermissible under the

Minnesota Constitution. Olson-Baker is generally correct that the Minnesota Constitution may afford broader protections than the United States Constitution, but the supreme court has cautioned that courts must take a "restrained approach when both constitutions use identical or substantially similar language." *See Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005). And the supreme court has explicitly stated:

> We feel compelled to make clear here, as we did in *Wiegand*, that our holding [that the challenged search was impermissible under the Minnesota Constitution] should not be read as limiting in any way a search conducted pursuant to *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), for purposes of officer safety. *See State v. Wiegand*, 645 N.W.2d 125, 136 (Minn.2002).

State v. Fort, 660 N.W.2d 415, 419 n.2 (Minn. 2003).

We are not persuaded that the Minnesota Constitution requires a higher level of scrutiny for the search at issue here. The cases cited by Olson-Baker to support his assertion generally analyze whether the Minnesota Constitution requires a reasonable, articulable suspicion to support a certain type of search or seizure. *See State v. Leonard*, 943 N.W.2d 149, 160 (Minn. 2020) (holding that reasonable suspicion is required "to search the sensitive location information in a [hotel] guest registry"); *State v. Carter*, 697 N.W.2d 199, 211 (Minn. 2005) (concluding that reasonable suspicion is required to justify a dog sniff outside a self-storage unit); *Fort*, 660 N.W.2d at 419 (determining a search violated the Minnesota Constitution because it was unsupported by reasonable suspicion); *Ascher v. Comm'r of Pub. Safety*, 519 N.W.2d 183, 187 (Minn. 1994) (holding that a temporary roadblock to check for impaired drivers violated the Minnesota Constitution

because investigative stops must be supported by individualized articulable suspicion of wrongdoing).

It is well-established that a pat search for weapons, such as the search here, must be supported by a reasonable, articulable suspicion even under the Fourth Amendment to the United States Constitution. *Lemert*, 843 N.W.2d at 230. Olson-Baker does not cite to any cases in which Minnesota courts have held the state to a heavier burden to justify a pat search under the Minnesota Constitution than the United States Constitution. And none of the cases cited by Olson-Baker suggest that the threshold for what constitutes a reasonable, articulable suspicion differs depending on which constitution is the basis for the claim asserted.

We therefore conclude, based on the totality of the circumstances, that the state satisfied its burden of establishing that the officer had a reasonable, articulable suspicion to justify the pat search and temporary detention. *See State v. Flowers*, 734 N.W.2d 239, 252 (Minn. 2007) (determining that "suspicious movements" lasting approximately 45 seconds justified a reasonable suspicion that a vehicle's occupant was "involved in some type of criminal activity and that he might have been armed and dangerous"); *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (noting that presence in a high-crime area combined with evasive conduct can justify a suspicion of criminal activity). Accordingly, we affirm the district court's denial of Olson-Baker's motion to suppress.

Affirmed.