STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2080

State of Minnesota,
Respondent,

vs.

Brenden Reynolds,
Appellant.

Filed January 11, 2021
Affirmed
Segal, Chief Judge
Dissenting, Bratvold, Judge

Ramsey County District Court
File No. 62-CR-18-6582

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

John J. Choi, Ramsey County Attorney, St. Paul, Minnesota; and

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Casey T. Rundquist, Minneapolis, Minnesota (for appellant)

Considered and decided by Bratvold, 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NONPRECEDENTIAL OPINION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

Appellant challenges his conviction of possessing a pistol without a permit in a public place, a gross-misdemeanor offense. Appellant contends that law enforcement's use of a "felony stop," involving guns drawn and handcuffing, violated his Fourth Amendment rights and that the search of his person, during which the handgun was found, exceeded the permissible scope of an investigative search under *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968). Because the state proved that law enforcement's actions were permissible under the circumstances in this case, we conclude that the stop and subsequent search were lawful and we affirm.

FACTS

On the morning of September 7, 2018, the police were called to the scene of a homicide. The police suspected that the homicide stemmed from a drug robbery gone bad after three males tried to rob another male. The police believed that the robbery victim was armed along with at least two of the other males, and a shootout occurred that involved several firearms. One of the presumed "robbers" was killed during the exchange of gunfire.

Within hours of the homicide, the police arrested one of the two suspects, but were still looking for the second suspect and one of the guns involved in the homicide. The police then learned from a family member of the deceased that an impromptu memorial service was being held at the home of the homicide victim. Police were told that the second suspect (target suspect) was there and likely had a gun.

Surveillance was set up at the house with a special agent from the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)[1] responsible for primary surveillance on the north and west sides of the house. Officers saw the target suspect enter the house. The special agent observed an individual, later identified as appellant Brenden Reynolds, outside the house and spotted what he believed to be a firearm concealed in the pocket of Reynolds's sweatshirt. The special agent radioed this information to the other officers involved in the investigation, but made it clear that Reynolds was not the target suspect. Based on the information from the special agent that Reynolds was likely carrying a gun and the fact that one of the guns used in the homicide had not yet been recovered, the police decided to follow Reynolds when he left in a car and to stop him after he was a few blocks away from the house.

Officers ordered Reynolds out of the vehicle at gunpoint. Reynolds complied and was placed in handcuffs. At least five officers were on the scene. An officer pat searched Reynolds's person and felt a hard object that he believed to be a firearm. Police then recovered a loaded Glock 9 millimeter semiautomatic pistol tucked in Reynolds's underwear.

Reynolds was charged with carrying a firearm without a permit in a public place, in violation of Minn. Stat. § 624.714, subd. 1a (2018). Prior to trial, Reynolds moved to suppress evidence of the recovered gun, challenging the validity of the stop and search. An evidentiary hearing was held on the motion. The state presented testimony from five law-

[1] The homicide occurred in the City of St. Paul and the homicide was being investigated jointly by the St. Paul Police Department and the ATF.

enforcement witnesses, including the special agent, and provided body-camera video from one of the involved officers. The sergeant in charge of the stop testified that he thought there was a high likelihood that the gun spotted on Reynolds could have been one of the guns involved in the homicide because firearms are "easily movable" and "can be passed from one person to another." The district court denied the motion to suppress on the grounds that there was reasonable, articulable suspicion to stop Reynolds's vehicle and to perform a search of his person for weapons. The district court concluded that the scope of the stop did not exceed the constitutional bounds of a *Terry* stop.

A bench trial was held pursuant to Minn. R. Crim. P. 26.01, subd. 4, based on stipulated evidence to preserve the right to appellate review of the suppression ruling. The district court found Reynolds guilty of gross misdemeanor possessing a pistol without a permit under Minn. Stat. § 624.714, subd. 1a. Reynolds now appeals.

DECISION

The sole issue presented here is whether the district court erred in concluding that law enforcement's use of a "felony stop," where guns were drawn and Reynolds was handcuffed, was a lawful investigative *Terry* stop that required only reasonable, articulable suspicion. Reynolds does not contest the right of law enforcement to initiate a *Terry* stop. Instead, he contends that, by drawing guns and placing him in handcuffs, the stop was converted from a *Terry* stop to an arrest requiring probable cause and that the conviction should, therefore, be reversed and the case remanded to the district court for a determination of whether there was probable cause for the arrest.

The issue raised by Reynolds is a question of law which we review de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures of people's persons and property. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, a warrantless search is per se unreasonable unless a well-delineated exception to the warrant requirement applies. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). If a search is unreasonable and violates the Fourth Amendment, any evidence seized as a result of the search must be suppressed. *Mapp v. Ohio*, 367 U.S. 643, 648-49, 81 S. Ct. 1684, 1688 (1961); *State v. Anderson*, 415 N.W.2d 57, 60 (Minn. App. 1987).

A *Terry* stop is an exception to the warrant requirement that allows officers to stop and search a person based on a lesser standard than is required for an arrest. Under *Terry*, 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*, 392 U.S. at 30, 88 S. Ct. at 1884), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

A *Terry* stop should be minimally invasive, and any invasiveness should be limited to the protective purpose of allowing the officer to pursue the investigation without fear of violence. *Adams v. Williams*, 407 U.S. 143, 146, 92 S. Ct. 1921, 1923 (1972); *see also State v. Balenger*, 667 N.W.2d 133, 139 (Minn. App. 2003) (citing *Terry*, 392 U.S. at 19-20, 88 S. Ct. at 1879), *review denied* (Minn. Oct. 21, 2003). A *Terry* detention and search

may become more invasive, and the restraint more significant, if the officer believes the subject is armed and presently dangerous. *Terry*, 392 U.S. at 24, 88 S. Ct. at 1881; *State v. O'Neill*, 216 N.W.2d 822, 828 (Minn. 1974). Each incremental intrusion on the subject's rights must be strictly tied to and justified by the circumstances. *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). Thus, "[a]n initially valid stop may become invalid if it becomes intolerable in its intensity and scope." *Id.* (quotations omitted).

To determine whether the "intensity and scope" of a stop was permissible, we balance the nature and degree of intrusion on an individual's rights versus the governmental interest in crime prevention and law-enforcement safety. *Id.* at 364-65; *Balenger*, 667 N.W.2d at 139. Facts are to be judged against an objective standard and the determination made based upon the totality of the circumstances. *Askerooth*, 681 N.W.2d at 364. In balancing the totality of the circumstances, we may look at such factors as the strength of the officers' articulable, objective suspicions at the time the person was "seized"; the duration of the "seizure"; the number of officers involved; and, finally, the need for immediate action by the officers and lack of opportunity for them to have made the stop under less threatening circumstances. *United States v. Sharpe*, 470 U.S. 675, 686, 105 S. Ct. 1568, 1575 (1985); *Flowers*, 734 N.W.2d at 253; *State v. Munson*, 594 N.W.2d 128, 137-38 (Minn. 1999).

Here, where Reynolds does not dispute that the officers had a valid basis for the stop, the question is whether the intensity and scope of that stop converted a lawful stop

under *Terry* into a de facto arrest requiring probable cause.[2] The district court, in denying Reynolds's motion to suppress, noted that the police "had ample reasonable, articulable suspicion" that Reynolds possessed a gun based on the special agent's observations and that the agent testified in "great and credible detail about how he came to his conclusion." The district court also noted that the special agent had "extensive training and experience with firearms." *See Flowers*, 734 N.W.2d at 251-52 ("[B]y virtue of the special training they receive, police officers articulating a reasonable suspicion may make inferences and deductions that might well elude an untrained person."); *see also Askerooth*, 681 N.W.2d at 369. Thus, the officers had a strong basis for their suspicion that Reynolds was carrying a gun.

The duration of the "seizure" was also limited and no longer than was necessary to conduct the pat search for weapons. The length of time from the stop of the vehicle to the discovery of the handgun was only about three minutes. The entire encounter only took slightly over four minutes. The duration then was short.

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[2] The Minnesota Supreme Court in *State v. Timberlake*, 744 N.W.2d 390, 397 (Minn. 2008), held that law enforcement can initiate a *Terry* stop based solely on a reasonable, articulable suspicion that an individual is carrying a gun. The supreme court observed in *Timberlake* that, even though it is lawful to carry a gun in public if the carrier has a lawful permit, the state's firearm statute, Minn. Stat. § 624.714, subd 1a (2006), serves as a general prohibition on possessing firearms in public. *Timberlake*, 744 N.W.2d at 394; *see also State v. Williams*, 794 N.W.2d 867, 872 (Minn. 2011). Thus, it is permissible for law enforcement to perform a *Terry* stop based solely on reasonable, articulable suspicion that a person is in possession of a gun in public. *Williams*, 794 N.W.2d at 872; *Timberlake*, 744 N.W.2d at 396-97. The right under the statute to carry a firearm in public with a permit merely serves as an exception to be asserted as an affirmative defense by the gun holder. *Timberlake*, 744 N.W.2d at 396-97.

With regard to the other factors, the district court pointed to the following circumstances:

> [the] police were in the midst of investigating a homicide, had not yet recovered all of the firearms used in the incident, and [Reynolds] was observed just hours after the killing with an apparent firearm at an impromptu wake at a house associated with the homicide victim and one of the suspects.

The district court determined that these factors justified the number of officers involved and the use of "felony stop" tactics where the officers stayed back by their squads with guns drawn while Reynolds exited the car and was then handcuffed for the pat search.

Reynolds challenges the district court's ruling on the grounds that "a reasonable person would have concluded, under the circumstances, that he was under arrest and not free to go." *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984). Reynolds's argument, however, ignores the broad swath of protection recognized in caselaw for officer safety. As this court noted in *Balenger*, "the trend has been to 'grant[] officers greater latitude in using force in order to 'neutralize' potentially dangerous suspects during an investigatory [stop].'" 667 N.W.2d at 139 (quoting *United States v. Perdue*, 8 F.3d 1455, 1464 (10th Cir. 1993)); *see also* Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 9.2(d) (6th ed. 2020) ("For better or for worse . . . the trend has led to the permitting of the use of handcuffs, the placing of suspects in police cruisers, the drawing of weapons and other measures of force more traditionally associated with arrest than with investigatory detention." (quotation omitted)).

For example, in *O'Neill*, the supreme court held that the law-enforcement officers were "justified for their own protection in holding the occupants [of the car] at gunpoint

until they were frisked for weapons" based on the radio report transmitted to the officers that the occupants of the car were armed. 216 N.W.2d at 828. The supreme court stated:

> [T]he determination whether an arrest occurs at the initial stop should not be decided solely by the conduct of the arresting officers or the amount of force they exhibit at the time. If an officer making a reasonable investigatory stop has cause to believe that individual is armed, he is justified in proceeding cautiously with weapons ready.

Id.

The supreme court came to a similar conclusion in *Munson* involving a vehicle stop where a confidential informant had advised police that a car contained a large amount of cocaine and that it was possible the occupants may be armed. 594 N.W.2d at 132. The police approached the car "with drawn guns, ordered the occupants out of the [car], handcuffed the occupants and frisked them for weapons." *Id.* at 137. The occupants were detained for 20 minutes from the time of the initial stop to the time that drugs were discovered in the car. The supreme court concluded that the officers had acted reasonably under these circumstances to "safely conduct their investigation." *Id.*

There are a number of other cases that are analogous. For example, in *State v. Ailport*, the supreme court found that it was permissible under *Terry* for law enforcement to order defendant out of his car in a motel parking lot at gunpoint, handcuff him, and detain him in the back of a squad car while they executed a search warrant of a motel room related to juvenile prostitution. 413 N.W.2d 140, 144 (Minn. App. 1987), *review denied* (Minn. Nov. 18, 1987). The court noted that law enforcement was aware that the defendant had a violent criminal history. *Id.*

And in *State v. Bitterman*, the supreme court held that a forcible stop of the defendant at gunpoint was lawful under *Terry* when the defendant arrived at a duplex where a search warrant was being executed for drugs. 232 N.W.2d 91, 93-94 (Minn. 1975). The defendant was not an occupant of the apartment. Police, however, recognized defendant as a heavy heroin user and "knew" from their training and experience that heroin users, as a general matter, could often be armed. *Id.* at 94.

We further note that there are a number of nonprecedential opinions of this court that are also in accord.[3]

[3] These cases include, for example: *State v. Manuel*, No. A20-0269, 2020 WL 5107299, at *5 (Minn. App. Aug. 31, 2020) (police responded to a call that a man had fallen asleep or was unconscious in a mini-van stopped in a White Castle drive-through lane; police did not exceed permissible limits of a *Terry* stop when they handcuffed Manuel for purposes of officer safety based on their observation that he appeared to be reaching toward the backseat of the vehicle before exiting the car and officers suspected that he might have reached for a weapon), *review denied* (Minn. Nov. 25, 2020); *State v. Palmer*, No. A18-1073, 2019 WL 2079803, at *5-7 (Minn. App. May 13, 2019) (the use of force by officers stayed within the permissible bounds of a *Terry* stop even though police used their squad cars to box in defendant's car, several officers approached defendant with guns drawn and pointed, police removed him from his vehicle, ordered him down on the ground and then handcuffed and searched him based on a report from a confidential informant that the informant had seen men with firearms and illegal drugs in the car being stopped by police); *State v. Bass*, No. A16-0744, 2017 WL 1210114, at *4 (Minn. App. Apr. 3, 2017) (permissible under *Terry*, for officer safety, for police to order two men out of a car at gunpoint and handcuff them based on a radio transmission that a 911 caller had reported there was a possible person with a gun inside of a vehicle in a parking ramp and, when the officers arrived at the scene, they saw three occupied cars parked next to each other), *review denied* (Minn. June 28, 2017); *State v. Gray*, No. A08-0468, 2009 WL 1586714, at *2-3 (Minn. App. June 9, 2009) (the use of force was found reasonable for officer safety under *Terry* when an officer spotted a man with a semiautomatic gun in the waistband of his pants and four officers with a canine responded to the call for assistance and ordered the man to the ground at gunpoint), *review denied* (Minn. Aug. 11, 2009); and *State v. Tennin*, No. A03-1805, 2004 WL 1152938, at *2 (Minn. App. May 25, 2004) (district court erred in suppressing evidence of a gun seized during an incident in which police were responding to a "man-with-gun" report; fact that officers exited their squad with guns drawn and

Reynolds compares his circumstances to those in *State v. Carver* where this court found that when an officer pulled the defendant over for speeding, forced him to lie prone on the ground, and put handcuffs on him, the officer's actions exceeded a *Terry* stop and the defendant had been arrested. 577 N.W.2d 245, 247 (Minn. App. 1998). The facts in *Carver*, however, are quite different from those presented here. In *Carver*, the defendant's vehicle was stopped by police for speeding—a noncriminal offense. The officer ordered Carver out of the car and to lie down on the road. *Id.* The officer then handcuffed him and escorted him back to the patrol car. *Id.* The officer's justification for taking these measures included the fact that the car continued to speed (75 miles per hour in a 55 mile-per-hour zone) even though the officer was in a marked squad (but had not yet activated its lights or siren) and the officer was alone and did not know where the closest "backup" was located. *Id.* This court held that Carver was arrested without probable cause because none of the circumstances identified by the officer justified requiring Carver to lie down on the road and to be handcuffed. *Id.* at 249.

In this case, the stop was made because of credible evidence reported by a trained ATF special agent that Reynolds was carrying a gun—a stop for suspicion of a criminal offense, not a noncriminal traffic violation.[4] *Carver* and other cases where officer conduct

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ordered a group of men that included a man who fit the description provided by the 911 caller to show their hands did not convert the detention from a valid *Terry* stop to an arrest without probable cause), *review denied* (Minn. Aug. 25, 2004).

[4] It is worth noting that the fact that the offense level was that of a gross misdemeanor as opposed to a felony is not relevant to the analysis. In *O'Neill*, for example, the offense level was only a misdemeanor under a municipal ordinance. 216 N.W.2d at 827.

has often been found to exceed the reasonable bounds of *Terry* typically involve stops for noncriminal, minor traffic offenses, whether it is speeding as in *Carver*, *id.* at 247, the lack of a rear license-plate light as in *Flowers*, 734 N.W.2d at 243, or for failure to obey a stop sign as in *Askerooth*, 681 N.W.2d at 356-57. By contrast, here, the officers knew at the time of the stop that a firearm was likely involved. Firearms inherently present at least the potential for significant danger and, as this court has previously stated, "the use of reasonable force is almost invariably justified in cases involving persons suspected of being armed."[5] *Balenger*, 667 N.W.2d at 140.

Moreover, in this case, the officers involved in stopping Reynolds were actively investigating a homicide that had happened only four to five hours earlier that same day. While Reynolds was not a suspect in the homicide, he was observed carrying what law enforcement believed was a gun at the impromptu wake of the homicide victim where the target suspect was present. In addition, the officers were still searching for one of the weapons involved in the homicide, which was believed to be a semiautomatic firearm. The sergeant in charge of the stop also testified that guns were often passed around and, thus, they suspected that Reynolds may have taken possession of the gun used in the homicide since he was at the same house as the target suspect. These facts distinguish this case from

[5] We also note that, in *Timberlake*, the supreme court relied on the fact that the act of carrying a firearm is inherently dangerous such that it would not be proper to impose what would amount to an "impossible burden" on the state to prove that a person did not have a permit. 744 N.W.2d at 396-97. The supreme court explained that, in making the assessment of whether to place the burden of proving an exception on the defendant instead of the state, the "court must decide that the act in itself, without the exception is ordinarily dangerous to society or involves moral turpitude." *Id.* at 397 (quotations omitted).

Carver. These facts also lend support to the final factor in the balancing test—the need for immediate action.

As to the question of whether the stop might have been made under less threatening circumstances, we can speculate that law enforcement could have deployed fewer officers, but we are not persuaded that the intensity of the stop was outside the bounds of the scope of conduct allowed under applicable precedent, particularly when considering the totality of the factors. Here, the basis for the officers' suspicions of criminal activity was strong, the duration of the seizure was only a few minutes and the state established a reasonable need for immediate action based on the ongoing investigation of a homicide that occurred within no more than five hours before the stop of Reynolds.

The result we reach, however, is not a foregone conclusion. We are mindful, for example, of the fact that the police did not know who Reynolds was at the time of the stop. He just happened to be at the house of the homicide victim and, aside from observing that he likely possessed a gun, there was no other evidence that he had engaged in criminal conduct. We are also mindful that there were numerous officers present at the stop, with at least three who had their guns drawn. Under other circumstances, this alone could be enough to convert a stop from one permissible under *Terry* to an arrest requiring probable cause. As can be discerned from the well-argued dissent, this is a close case. Nevertheless, under the totality of the circumstances presented here, we conclude that the officers' actions were within the permissible zone of conduct allowed under established case precedent for purposes of officer safety during a *Terry* stop.

The district court did not err in denying the motion to suppress the evidence of the gun and we affirm the conviction.

Affirmed.

BRATVOLD, Judge (dissenting)

I respectfully dissent. I agree with the majority that law-enforcement officers stopped Reynolds because they reasonably suspected he carried a firearm, and that this was an investigative stop requiring less than probable cause. But *Terry* and over five decades of caselaw require that an investigative stop be reasonable in its scope, duration, and intensity. *Terry v. Ohio*, 392 U.S. 1, 18, 88 S. Ct. 1868, 1878 (1968); *State v. Smith*, 814 N.W.2d 346, 351 (Minn. 2012). While most *Terry* cases address the scope or duration of a stop, a stop may violate the Fourth Amendment "by virtue of its intolerable intensity . . . ." *Terry*, 392 U.S. at 18, 88 S. Ct. at 1878. Because the *Terry* stop here was unreasonable in its intensity, it violated Reynolds's Fourth Amendment right to be free of unreasonable searches and seizures. Thus, I would grant the motion to suppress the handgun on this basis and reverse the district court.

The United States and Minnesota Constitutions guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. I agree with the majority's thoughtful discussion of the *Terry* rule, as well as the determination that the officers had reasonable suspicion to stop Reynolds for further investigation. Law enforcement may conduct a *Terry* stop based solely on reasonable, articulable suspicion that a person is in possession of a gun in public. *State v. Timberlake*, 744 N.W.2d 390, 396-97 (Minn. 2008). Even though officers testified that Reynolds was not a "target" in the homicide investigation, I agree with the majority that officers had reasonable, articulable suspicion that Reynolds had what a special agent "believed to be a firearm." The agent testified that

he "observed [Reynolds] sitting at the table[1] with what [he] thought appeared to be a firearm at the time."[2] This is sufficient to allow a brief investigative stop under *Timberlake*.

"An initially valid stop may become invalid if it becomes 'intolerable' in its 'intensity or scope.'" *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quoting *Terry*, 392 U.S. at 17-18, 88 S. Ct. at 1868). In our review of *Terry* stops, we balance "the nature and degree of the intrusion on an individual's Fourth Amendment rights against the governmental interest in crime prevention and legitimate concerns about the safety of law-enforcement officers." *State v. Balenger*, 667 N.W.2d 133, 139 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003); *see also Askerooth*, 681 N.W.2d at 365. "[I]t is the state's burden to show that a seizure was sufficiently limited to satisfy these conditions." *Askerooth*, 681 N.W.2d at 365 (citing *Florida v. Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 1326 (1983)). *Balenger* instructs that when we determine whether officer conduct transformed an investigative stop into an unlawful arrest, we "must specifically consider *the aggressiveness of the police methods* and the intrusiveness of the stop against the

[1] On cross-examination, the agent corrected his testimony and said that he saw Reynolds at the side of the house, and that there was no table.

[2] The agent testified that he "couldn't see a distinct firearm," yet gave three reasons for his belief that Reynolds was carrying a firearm. First, "[t]he way he was holding it," because Reynolds "wouldn't take a hand off of it, which told me it was heavy enough that doing so would make it cumbersome to move." Second, the agent "could see it was black or dark in color." And third, "the way the fabric moved around, it made distinct hard angles, telling me it was a hard object." The agent also testified that, based on his training and experience, and "based on the size and shape of the object, that it was larger than a cell phone and heavier than a cell phone."

justification for the use of such tactics, i.e., whether the officer had sufficient basis to fear for his or her safety." 667 N.W.2d at 139 (emphasis added).

Caselaw following *Terry* also requires us to consider the totality of circumstances when determining the reasonableness of a stop. *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998). As the majority notes, those non-exclusive factors include (1) the strength of the officer's articulable, objective suspicions when the person was seized; (2) the duration of the seizure; (3) the number of officers involved; and (4) the need for immediate action by the officers and lack of opportunity for them to have made the stop under less threatening circumstances. *United States v. Sharpe*, 470 U.S. 675, 686, 105 S. Ct. 1568, 1575 (1985); *State v. Flowers*, 734 N.W.2d 239, 253 (Minn. 2007); *State v. Munson*, 594 N.W.2d 128, 137-38 (Minn. 1999). I would follow *Balenger* and add a fifth factor, "the aggressiveness of the police methods," to the majority's nonexclusive list. *See Balenger*, 667 N.W.2d at 139. Based on my review of the district court's findings and this record, the balance of these factors is wanting.

First, the officers' suspicion of Reynolds was particularly thin, based only on a missing suspect and firearm from the homicide, Reynolds's attendance at the wake for one of the suspected robbers, the general fact that firearms are "easily moveable," and what looked like a firearm in Reynolds's sweatshirt.[3] Well before the stop, officers confirmed

[3] The officers did not have reason to suspect that Reynolds carried the missing firearm. While the police sergeant testified that "one of the officers actually saw [the homicide suspect] there," the state produced no evidence or testimony that the suspect interacted with Reynolds. The agent observed Reynolds "[o]ver a period of several minutes," but did not testify about any interaction between Reynolds and the suspect. The agent also did not testify that he lost sight of Reynolds at any time. Thus, it was not reasonable to infer that

Reynolds was not a suspect in the homicide. Officers also agreed that Reynolds is not in their gang-member database, although it is not clear when they learned this. And officers conceded that they had no descriptive information about the missing firearm. They only believed it was a semiautomatic firearm—either a handgun or possibly a long gun. Any connection between the missing firearm and the firearm in Reynolds's possession was conjecture, at best.

In fact, the officers' suspicion of Reynolds appears to have stemmed from his association with the wake. Minnesota has long rejected suspicion by "mere association" as unreasonable. *See State v. Varnado*, 582 N.W.2d 886, 890 (Minn. 1998); *see also State v. Diede*, 795 N.W.2d 836, 844 (Minn. 2011) ("Mere proximity to, or association with, a person who may have previously engaged in criminal activity is not enough to support reasonable suspicion."). It is concerning that, while deciding to stop Reynolds, a police sergeant tied Reynolds to the homicide even though the sergeant confirmed that Reynolds was not a suspect. The sergeant stated, "[i]f we think we saw a gun come out of his waistband, we can articulate it enough with the crime that happened earlier, I think we're good to stop him."

The majority is correct that the sergeant testified that he decided to stop Reynolds after he left the wake because he "felt like there was a high likelihood that there was evidence from that homicide leaving in that vehicle." But he also testified that this likelihood rested on two things—"that there was a weapon involved, and [Reynolds was]

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the suspect would have had the time or opportunity to hand the missing firearm to Reynolds.

coming from that address associated with the homicide." (Emphasis added.) Thus, his suspicion was particular to the wake and presumably included everyone in attendance. This is simply too generalized and too prone to unwarranted bias to support reasonable suspicion.

Turning to the second factor, I agree with the majority that the duration of the seizure was objectively brief. The state's brief to this court argues that the stop "was approximately only five minutes in duration." Even so, from the perspective of a young Black man, five minutes at the end of four officers' weapons may have felt like an eternity.

The state's case fails, however, on the third, fourth, and fifth factors—the number of officers involved, the need for immediate action, and the aggressiveness of police tactics. I am troubled that the district court made no findings about any of these factors. Based on my review of one officer's body-camera video, five police cars and five officers stopped Reynolds—at least four of whom had weapons drawn. The state's brief to this court states the number of officers with weapons drawn: "Four officers executed a felony stop of the vehicle with their weapons drawn."[4]

The state offered little evidence of the need for immediate action and lack of opportunity for the officers to stop Reynolds under less threatening circumstances. This court should not second-guess law enforcement's own assessment of the dangerousness of

[4] The view that the officers remained by their squad cars with guns drawn is not persuasive and is tentative, at best. The district court made no finding on this point and the record has only one officer's body-camera video. It is true that this particular officer drew her gun and stayed by her squad car until after Reynolds was handcuffed. This fact, however, does not affect the analysis: four officers with drawn weapons pointed at a suspect is a significant show of force regardless of the officers' distance from the suspect.

a situation, and officers have a special insight based on their training and experience. *See Flowers*, 734 N.W.2d at 251-52. But it is concerning that the state did not offer any evidence that police assessed the danger before making this stop, nor did the state establish the need for an immediate stop with an overwhelming show of force. Our caselaw states that "[i]f *an* officer making a reasonable investigatory stop has cause to believe that the individual is armed, *he* is justified in proceeding cautiously with weapons ready." *State v. O'Neill*, 216 N.W.2d 822, 828 (Minn. 1974) (emphasis added). Thus, the intensity of the stop must be reasonable, or proportional, to the danger perceived.[5]

The only information officers had about Reynolds was that he had attended the wake of a homicide victim and probably had a handgun in his sweatshirt. As the majority notes, "aside from observing that he likely possessed a gun, there was no other evidence that he had engaged in any unlawful conduct." *Supra* at 13. Under *Timberlake* and *O'Neill*, this

[5] The importance of "proportionality" is borne out in the cases cited by the majority, *supra* at 9-10, to show officers may respond reasonably to safety concerns under particular circumstances. *See O'Neill*, 216 N.W.2d at 828 (two officers informed that three suspects shot out streetlights within previous half hour); *State v. Ailport*, 413 N.W.2d 140, 144 (Minn. App. 1987) (officers knew that appellant was armed, had a violent criminal history, and observed furtive movements), *review denied* (Minn. Nov. 18, 1987). I am not persuaded by caselaw discussing the scope of a *Terry* stop and search where officers knew of appellant's ongoing drug activity and had personally seen drug sales at the premises, although this caselaw also reflects that police response must be proportional to the danger. *See, e.g.*, *State v. Bitterman*, 232 N.W.2d 91, 93-94 (Minn. 1975) (officers recognized that the defendant was a heavy heroin user and "knew" from their training and experience that heroin users were often armed). I would not include *Munson* in this analysis because the supreme court's focus was on probable cause for the arrest of three vehicle occupants. 594 N.W.2d at 136 ("Specifically at issue are whether the police had probable cause to search the Blazer and whether, even if probable cause to search the Blazer existed, the scope of the search and the detention of Munson were unreasonable."). In short, *Bitterman* and *Munson* involve additional circumstances that distinguish these cases from Reynolds's circumstances.

was reasonable suspicion for one or two officers to stop Reynolds with weapons ready or drawn. But it was not reasonable suspicion to conduct an immediate stop by five police cars with five officers, four of whom had guns drawn from the outset. In short, the use of a "felony stop" *of this intensity* when Reynolds was not suspected of a felony is deeply concerning. Given these circumstances, the show of force used to detain Reynolds was excessive.

Thus, based on the totality of the circumstances, I would conclude that the nature and degree of intrusion into Reynolds's Fourth Amendment rights was great. Reynolds was stopped by five squad cars and five officers. At least four of the officers had weapons drawn from the very outset of the stop. At gunpoint, officers ordered Reynolds out of his vehicle with hands shown, commanded him to walk backward facing away from officers, handcuffed him, and searched him. While I acknowledge that the officers had reasonable suspicion to stop Reynolds because they believed that he carried a handgun, I conclude that the governmental interest in crime prevention was minimal. Reynolds's link to the homicide was, as best, a justification bordering on "inchoate and unparticularized suspicion or 'hunch.'" *See Terry*, 392 U.S. at 27, 88 S. Ct. at 1883. Reynolds was decidedly *not* a suspect in the homicide and was stopped because he carried a gun that *might* have been used in the homicide. Balancing the grave intrusion into Reynolds's Fourth Amendment rights against the government's limited interest in crime prevention and safety, I would hold that the intensity of this stop exceeded the reasonable bounds of *Terry*.

For these reasons, I respectfully dissent and would reverse the district court's order denying suppression of the evidence seized during the stop. *See, e.g.*, *Diede*, 795 N.W.2d

at 842-46 (reversing district court's denial of motion to suppress evidence because officer's search exceeded scope of investigatory stop and stemmed from appellant's association with suspected criminal).