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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1708**

State of Minnesota,
Respondent,

vs.

Jamaul Anthony Brisco-Turner,
Appellant.

**Filed August 7, 2017
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-14-35251

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Sean R. Somermeyer, Special Assistant Public Defender, Faegre Baker Daniels LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Johnson, Judge; and
Kalitowski, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Judge

The Hennepin County District Court found Jamaul Anthony Brisco-Turner guilty of being an ineligible person in possession of a firearm. Before trial, the district court denied Brisco-Turner's motion to suppress evidence of a firearm that was found on his person in a pat-search. We conclude that the law-enforcement officer who performed the pat-search had a reasonable, articulable suspicion that Brisco-Turner was engaging in criminal activity and had a reasonable belief that he was armed and dangerous. Therefore, we affirm.

FACTS

On December 3, 2014, Officer Buzicky of the Metro Transit Police Department was conducting fare-compliance checks at the light-rail station at the Mall of America. The officer stood on the platform at the end of the "paid-fare zone," where passengers must exit after walking off the train, and asked all passengers to show that they paid the required fare.

As a group of passengers walked off a recently arrived train, Officer Buzicky became suspicious of Brisco-Turner because he walked slowly toward the end of the platform, as if he was avoiding the fare-compliance check. As Brisco-Turner got closer, Officer Buzicky saw a clear plastic bag that appeared to contain marijuana hanging out of a front pocket of Brisco-Turner's pants. Officer Buzicky grabbed the bag and removed it from Brisco-Turner's pocket. Officer Buzicky asked Brisco-Turner to step to the side of the platform. Brisco-Turner did not respond and did not make eye contact but, rather,

looked past Officer Buzicky, which caused the officer to believe that Brisco-Turner might either fight or flee. Officer Buzicky grabbed Brisco-Turner's arm to guide him to the side of the platform. As the officer did so, Brisco-Turner tried to walk past him. Officer Buzicky placed Brisco-Turner in handcuffs and informed him that he was being detained.

After he was handcuffed, Brisco-Turner placed both of his hands down the back of his pants. Officer Buzicky became concerned because he thought Brisco-Turner might be reaching for a weapon. Officer Buzicky pulled Brisco-Turner's hands out of his pants and asked him for identification. Officer Buzicky saw that Brisco-Turner had a wallet in a back pocket of his pants and removed it from the pocket. Brisco-Turner again placed his hands down the back of his pants.

Officer Buzicky decided to conduct a pat-search of Brisco-Turner to determine whether he had a weapon in his pants. Officer Buzicky walked Brisco-Turner a short distance to the police substation. While walking, Officer Buzicky noticed that Brisco-Turner was walking abnormally, as if he was trying to conceal a weapon. After arriving at the substation, Officer Buzicky conducted a pat-search of Brisco-Turner. As he did so, a handgun fell out of Brisco-Turner's pants onto the floor. The substance in the clear plastic bag that Officer Buzicky seized from Brisco-Turner's pocket was tested and weighed and was determined to be 5.2 grams of marijuana.

The next day, the state charged Brisco-Turner with one count of being an ineligible person in possession of a firearm, in violation of Minn. Stat. § 624.713, subd. 1(2) (2014). In December 2015, Brisco-Turner moved to suppress the evidence of the handgun on the ground that it was discovered in an unlawful search. After a two-day evidentiary hearing,

the district court issued an order denying Brisco-Turner's motion. The district court reasoned that the search was valid for two reasons: first, because Officer Buzicky had arrested Brisco-Turner and was permitted to conduct a search incident to arrest and, second, because Officer Buzicky had a reasonable, articulable suspicion of criminal activity for an investigatory stop and a reasonable belief that Brisco-Turner was armed and dangerous.

In July 2016, Brisco-Turner waived his right to a trial by jury and stipulated to the prosecution's case, and the parties agreed that the district court's ruling on the motion to suppress would be dispositive. *See* Minn. R. Crim. P. 26.01, subd. 4. The district court found Brisco-Turner guilty and sentenced him to 60 months of imprisonment. Brisco-Turner appeals.

D E C I S I O N

Brisco-Turner argues that the district court erred by denying his motion to suppress evidence. He first contends that the search is not justified as a search incident to arrest because Officer Buzicky did not have probable cause to arrest him for possession of marijuana or for not paying the required fare. He also contends that the search is not justified by a valid investigatory stop and a reasonable belief that he was armed and dangerous. In its responsive brief, the state argues that the search is justified for both of the reasons identified by the district court. At oral argument, the state suggested that the more appropriate justification for the search is Officer Buzicky's reasonable belief that Brisco-Turner was armed and dangerous. Accordingly, we first will analyze that basis of the district court's order.

A.

The Fourth Amendment to the United States Constitution guarantees the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. A law-enforcement officer may not arrest a person without a warrant unless the officer has probable cause to believe that the person has committed a crime. *Ker v. California*, 374 U.S. 23, 34-35, 83 S. Ct. 1623, 1630 (1963) (plurality opinion); *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011). An officer may briefly detain a person for an investigation of limited scope if the officer has a reasonable, articulable suspicion that the person has engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968). A reasonable, articulable suspicion exists if, “in justifying the particular intrusion the police officer [is] able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Id.* The reasonable-suspicion standard is not high, but the suspicion must be “something more than an unarticulated hunch,” *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quotation omitted), and more than an “inchoate and unparticularized suspicion,” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). An officer “must be able to point to something that objectively supports the suspicion at issue.” *Davis*, 732 N.W.2d at 182 (quotation omitted); *see also Terry*, 392 U.S. at 21-22, 88 S. Ct. at 1880.

As a general rule, a warrantless search is unreasonable. *Missouri v. McNeely*, 569 U.S. 141, ___, 133 S. Ct. 1552, 1558 (2013). But if, during an investigatory stop, an officer has a reasonable belief that a suspect is armed and dangerous, the officer may conduct a

pat-search of the suspect to find and remove any weapon that may present a risk to the officer's safety or the safety of others. *Terry*, 392 U.S. at 26-27, 88 S. Ct. at 1883. "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." *Id.* at 27, 88 S. Ct. at 1883. "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.'"" *State v. Lemert*, 843 N.W.2d 227, 230 (Minn. 2014) (quoting *Minnesota v. Dickerson*, 508 U.S. 366, 373, 113 S. Ct. 2130, 2136 (1993) (quoting *Terry*, 392 U.S. at 26, 88 S. Ct. at 1882)).

This court applies a clear-error standard of review to a district court's findings concerning the facts on which the officer based his actions. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). If the facts are established, we apply a *de novo* standard of review to a district court's determination whether a pat-search is valid. *Lemert*, 843 N.W.2d at 231.

B.

Officer Buzicky testified that he suspected that Brisco-Turner had not paid the required fare because Brisco-Turner engaged in evasive conduct. Shortly thereafter, the officer observed a bag of marijuana protruding from Brisco-Turner's pocket. The district court found the officer's testimony to be "completely credible." The officer's testimony establishes a reasonable, articulable suspicion of criminal activity that is sufficient to justify his decision to conduct a limited investigatory detention. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (stating that "defendant's evasive conduct after eye contact

with police . . . justified police in reasonably suspecting criminal activity”), *aff’d*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

Officer Buzicky also testified that, when he attempted to conduct a limited investigation, Brisco-Turner did not cooperate but, rather, gave the officer the impression that he might fight or flee. That testimony establishes a valid reason for the officer’s decision to move Brisco-Turner to the side of the platform and to handcuff him. See *Michigan v. Summers*, 452 U.S. 692, 702-03, 101 S. Ct. 2587, 2594 (1981) (stating that officer may “exercise unquestioned command of the situation” during investigatory detention to ensure officer safety and prevent suspect from fleeing). Brisco-Turner contends that he was placed under arrest when he was handcuffed. But “briefly handcuffing a suspect while the police sort out the scene of an investigation does not *per se* transform an investigatory detention into an arrest.” *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999). An investigative detention cannot be characterized as a *de facto* arrest if “the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.” *United States v. Sharpe*, 470 U.S. 675, 686, 105 S. Ct. 1568, 1575 (1985); see also *Florida v. Royer*, 460 U.S. 491, 506, 103 S. Ct. 1319, 1329 (1983); *State v. Moffatt*, 450 N.W.2d 116, 119 (Minn. 1990); *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984). Thus, Officer Buzicky did not extend the scope of Brisco-Turner’s detention by handcuffing him in the course of the limited investigation.

Officer Buzicky further testified that, after being handcuffed, Brisco-Turner twice attempted to put his hands inside his pants, which caused the officer to suspect that Brisco-

Turner might be trying to reach for a weapon. Officer Buzicky's suspicion intensified when he saw Brisco-Turner walking in an unusual way toward the police substation. That testimony is sufficient to establish a reasonable belief that Brisco-Turner was armed and dangerous during the investigatory detention, which justifies a pat-search to ensure the officer's safety and the safety of other persons. See *Terry*, 392 U.S. at 27, 88 S. Ct. at 1883; *State v. Alesso*, 328 N.W.2d 685, 688 (Minn. 1982) (concluding that officer was justified in searching suspect who "made a furtive movement of his hand toward [his] pocket, causing the officer to suspect that he might be reaching for a weapon"). During that pat-search, Officer Buzicky found the handgun that Brisco-Turner was ineligible to possess.

In sum, the district court did not err by denying Brisco-Turner's motion to suppress evidence because, before conducting a pat-search of Brisco-Turner, Officer Buzicky had a reasonable, articulable suspicion of criminal activity and a reasonable belief that Brisco-Turner was armed and dangerous. In light of that conclusion, we need not consider Brisco-Turner's argument that the search was not a search incident to a valid arrest.

Affirmed.