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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0644**

State of Minnesota,
Respondent,

vs.

George Earl Heinrich,
Appellant.

**Filed March 19, 2018
Affirmed
Klaphake, Judge***

Anoka County District Court
File No. 02-CR-16-98

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

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Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Kirk, Judge; and Klaphake,
Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant George Earl Heinrich challenges his conviction for second-degree possession of a controlled substance, arguing that the district court erred by not suppressing the methamphetamine evidence because the police officers did not have a lawful basis to seize Heinrich. Because the police officers had reasonable suspicion to justify detaining Heinrich, and because their discovery of the methamphetamine was within the scope of his detention, we affirm.

DECISION

I. Forfeiture

As a preliminary matter, the state contends that Heinrich forfeited the right to assert a constitutional challenge to his seizure by failing to first raise the issue in district court. A forfeiture is “a failure to make a timely assertion of a right.” *State v. Beaulieu*, 859 N.W.2d 275, 278 n.3 (Minn. 2015). Typically, an issue not raised at an omnibus hearing is forfeited. *State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996). However, while a pretrial motion to suppress should provide the state with reasonable notice of issues raised by the defendant, “[i]n practice, the defense counsel at the outset of an omnibus hearing often makes a rather general statement of the issues.” *State v. Needham*, 488 N.W.2d 294, 296 (Minn. 1992). Here, Heinrich’s pretrial motion focused primarily on the validity of a search warrant and other matters. But at the omnibus hearing in April 2016, in response to the district court’s statement that Heinrich had not yet claimed a constitutional violation, Heinrich volunteered that he wished to challenge the validity and scope of his stop and

search. This statement did constitute notice and reservation of a constitutional claim. Under these circumstances, we conclude that Heinrich preserved the constitutional issue for appeal.

II. Reasonable Suspicion

The Fourth Amendment to the United States Constitution and Article I, Section 10, of the Minnesota Constitution 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. A search or seizure conducted without a warrant is per se unreasonable unless it falls under a delineated exception to the warrant requirement. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). If police discover evidence from a warrantless and unreasonable search or seizure by a method that is not an exception to the warrant requirement, the evidence must be suppressed. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

A seizure occurs “when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” *In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S. Ct. 1868, 1879 n.16 (1968)). But police officers may temporarily seize an individual suspected of criminal activity if they have specific, articulable facts that reasonably warrant the stop. *In re Welfare of M.D.R.*, 693 N.W.2d 444, 448 (Minn. App. 2005). The requisite showing for reasonable suspicion is not very high and is less than probable cause. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008).

The police had a reasonable, articulable suspicion that Heinrich was involved in criminal activity to support his stop. While police were executing a search warrant of a residence, an officer surveilling the area observed two individuals, Heinrich and a female, “running away” from the garage area of the residence. Officers pursued them by car and by foot. Upon being ordered to stop, Heinrich and the female slowed to a walking pace, and Heinrich leaned down to shove an item into a snowbank. When Heinrich and the female were detained, police discovered in the snowbank a Ziploc baggie containing a white crystalline substance that was later identified as methamphetamine.

Police seized Heinrich when they approached him and directed him to stop. See *E.D.J.*, 502 N.W.2d at 783. We conclude that they had reasonable suspicion of criminal activity at that time because Heinrich had been seen running from a house as police were arriving there to execute a search warrant. See *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff’d* 508 U.S. 366, 113 S. Ct. 2130 (1993) (upholding legality of stop when officers observed the defendant depart from a building that had a history of drug activity, and defendant avoided eye contact with police); see also *M.D.R.*, 693 N.W.2d at 449 (upholding legality of stop when officers received an officer-needs-help call and upon arrival observed the defendant running from the scene). Heinrich’s conduct of running away from the garage area of the house to be searched was sufficient to justify his brief stop.¹

¹ Heinrich emphasizes that the state did not articulate what type of criminal activity he was suspected of committing. But reasonable suspicion does not require that criminal activity has already occurred, only that criminal activity may be afoot. See *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695 (1981) (“An investigatory stop must be justified by

For these reasons, we conclude that police had a reasonable, articulable suspicion to suspect Heinrich of criminal activity, justifying an investigatory stop. And because we uphold the stop, we decline to address Heinrich's argument that he abandoned the methamphetamine as the result of an illegal seizure. *See State v. Askerooth*, 681 N.W.2d 353, 370 (Minn. 2004) (stating that evidence abandoned in response to an illegal seizure must be suppressed).

Affirmed.

some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.”).