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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0655**

State of Minnesota,
Respondent,

vs.

Sherman Lee Williams,
Appellant.

**Filed February 26, 2018
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 27-CR-16-13794

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Mary Moriarty, Fourth District Public Defender, James A. Kamin, Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal following his conviction of felon in possession of a firearm, appellant challenges a pretrial order that denied his motion to suppress evidence seized from him after the investigatory stop of a car in which he was a passenger. We affirm.

FACTS

On May 23, 2016, at about 3:30 a.m., Officer Dylan Pearson and his partner were on patrol near Broadway Street in Minneapolis when a car attracted Pearson's attention, and he decided to conduct "a routine registration check" of the car's license plate. The check revealed that the registered owner of the car had an outstanding felony arrest warrant for first-degree aggravated robbery, so Pearson and his partner decided to stop the car. They did not have a physical description of the car's owner.

They activated their squad car's emergency lights, and the car stopped momentarily at a semaphore and soon after came to a full stop. A passenger in the left rear seat immediately got out of the car and ran away; Pearson left his squad car and chased the fleeing person because he thought the person was the driver. But as Pearson ran toward the car, he saw that the driver and a front-seat passenger were in the car. With his gun drawn, Pearson ordered the car's occupants to stop and put their hands up. The driver ignored the commands and drove off. Multiple squad cars with overhead emergency lights and sirens activated chased the fleeing car for several minutes through residential streets and alleys at speeds up to 90 miles per hour. The car finally stopped in an alley, and its two occupants fled in opposite directions.

Within 20 seconds of losing sight of the front-seat passenger, Pearson went to the end of the alley and saw a person who he believed to be the front-seat passenger. The person, who was later identified as appellant Sherman Lee Williams, was walking at a normal pace as he crossed a street, and he looked like the person that Pearson had just seen leaving the car and running through yards. Pearson testified that the neighborhood is “typically fairly quiet” at that time of night, and he “believed that there was a real possibility that [Williams] was the passenger.” At first, Williams ignored Pearson’s directives to stop, but Williams then stopped, and he complied when he was ordered to the ground at gunpoint and handcuffed. Williams “was sweating quite a bit,” and a search revealed that he possessed a handgun.

Williams was charged with felon in possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (Supp. 2015). The district court denied Williams’s motion to suppress evidence obtained by the police during the search, ruling that the police “had articulable suspicion to both detain and frisk [Williams] based on the reasonable prospect that [Williams] was subject to an active felony arrest warrant, and the fact that [Williams] had just fled the scene of a felony stop.” The district court denied Williams’s motion for reconsideration. Following that ruling, Williams stipulated to the state’s case in a trial to the court in order to obtain appellate review of the pretrial ruling. The district court found Williams guilty and imposed a 60-month executed sentence, stayed pending this appeal.

D E C I S I O N

When we review a district court’s pretrial order on a motion to suppress evidence, the district court’s factual findings are reviewed for clear error. *State v. Eichers*, 853

N.W.2d 114, 118 (Minn. 2014) (citation omitted). “But legal determinations, such as whether there was a seizure and, if so, whether that seizure was unreasonable, are reviewed de novo.” *Id.*

Legality of the Vehicle Stop

Individuals are guaranteed the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. In Minnesota, this right “requires application of *Terry*[¹] principles to traffic stops.” *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). “A *Terry* analysis involves [the] dual inquiry” of “whether the stop was justified” and “whether the actions of the police . . . were reasonably related to and justified by the circumstances that gave rise to the stop.” *Id.* Demonstration of “reasonable suspicion” is not demanding, but requires more than an “unarticulated hunch” without additional objectively articulable facts. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quotation omitted); *see State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003) (requiring investigatory stop to be based on more than “mere whim, caprice, or idle curiosity” (quotation omitted)).

Pearson testified at the suppression hearing that (1) the car initially attracted his attention because of its location and the time of day; (2) he and his partner initially attempted to stop the car because the registered owner was subject to a felony arrest

¹ In *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968), the Supreme Court ruled that police may stop and conduct a weapons frisk of a suspect if they observe “unusual conduct” and reasonably conclude “that criminal activity may be afoot” and the suspect “may be armed and presently dangerous.”

warrant; (3) their interest intensified when the first passenger fled the car; and (4) it was Williams's act of fleeing from the car that caused police to pursue and seize him.

Williams does not contest the legality of the warrantless registration check of the car's license plate. "A driver does not have a reasonable expectation of privacy in a license plate number which is required to be openly displayed." *State v. Setinich*, 822 N.W.2d 9, 12 (Minn. App. 2012); see *New York v. Class*, 475 U.S. 106, 114, 106 S. Ct. 960, 966 (1986) (stating that "it is unreasonable to have an expectation of privacy in an object required by law to be located in a place ordinarily in plain view from the exterior of the automobile"). Because police could investigate the car's license plate for any reason, they were not subject to *Terry* requirements when they decided to run the plates on the car.

Williams argues, however, that, after running the plates, police lacked reasonable suspicion to stop the car because they had not observed any violation of the law and they chose not to use their squad-car computer to acquire a physical description of the subject of the warrant. We disagree. In *State v. Pike*, 551 N.W.2d 919, 922 (Minn. 1996), the supreme court considered the validity of an investigatory stop of a vehicle that was based on an officer's knowledge that the owner of the vehicle had a revoked driver's license. Citing *State v. Duesterhoeft*, 311 N.W.2d 866 (Minn. 1981), the supreme court explained that, "[w]hen an officer observes a vehicle being driven, it is rational for him or her to infer that the owner of the vehicle is the current operator." *Pike*, 551 N.W.2d at 922. Then, based on this inference, the supreme court held

that it is not unconstitutional for an officer to make a brief, investigatory, *Terry*-type stop of a vehicle if the officer knows that the owner of the vehicle has a revoked license *so long as*

the officer remains unaware of any facts which would render unreasonable an assumption that the owner is driving the vehicle.

Id. (emphasis added).

Williams argues that, when the supreme court said “so long as the officer remains unaware,” it did not mean so long as the officer “remains *deliberately* unaware.” Williams contends that the holding of *Pike*, which allows a stop so long as the officer remains unaware, means that the officer remains unaware after a good-faith effort to acquire additional information. But nothing in *Pike* suggests that the supreme court intended to require that police make a good-faith effort to acquire additional information about the owner of a vehicle before inferring that the owner is the current operator. Instead, the supreme court noted that it found in *Duesterhoeft* that the officer who stopped a truck reasonably suspected that the owner of the truck was the person driving the truck even “though it was not evident from the facts that the officer had any reason to believe that the owner was driving.” *Pike*, 551 N.W.2d at 922. *Pike* does not require police to make an effort to acquire information about a vehicle’s owner before inferring that the vehicle’s owner is its operator.

Legality of Williams’s Seizure

Williams argues that police lacked a reasonable suspicion to seize him after he ran from the car. He contends that, (1) “[e]ven if, under *Pike*, the police officers in this case could initiate a car stop, there is absolutely nothing in *Pike* that would allow an inference that anyone other than the driver was the registered owner”; and (2) expanding the inference in *Pike* to anyone found within the vehicle undercuts Minnesota’s longstanding

requirement of individualized articulable suspicion. But Williams's seizure after he ran from the car was not based on an inference that Williams was the registered owner.

The justification for the initial vehicle stop was that police learned that the registered owner of the car had a current felony arrest warrant for first-degree aggravated robbery, and they inferred that the owner was driving the car. As a passenger, the initial vehicle stop included Williams, but it was not based on an individualized suspicion about Williams. Unlike the initial vehicle stop, however, Williams's seizure after he ran did not occur until after the following events occurred: (1) a passenger immediately fled from the car when it briefly stopped, (2) the driver ignored police commands during the initial stop, (3) the driver engaged in a high-speed chase in a residential neighborhood, and (4) the driver and Williams fled when the car stopped a second time.

Because Williams was not the driver, his fleeing from the car after it stopped is the only act of fleeing that can be directly attributed to him; as a passenger, he may not have chosen to engage in the high-speed chase. But when the car stopped, he fled on foot. In *State v. Houston*, this court recognized that “[h]eadlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.” 654 N.W.2d 727, 733 (Minn. App. 2003) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000)), *review denied* (Minn. Mar. 26, 2003).

In light of the information about the outstanding warrant and the high-speed chase that had just occurred, it was reasonable for Pearson to suspect that criminal activity might be afoot and that the driver and any passenger in the car could be armed and dangerous.

State v. Dickerson, 481 N.W.2d 840, 843 (Minn. 1992) (during valid *Terry* stop, permitting frisk of a defendant if police reasonably suspect that the defendant could be armed and dangerous), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993). The initial attempt to stop the car and the chase that followed, together with Williams's fleeing, created a reasonable suspicion of criminal activity that justified Williams's seizure. We therefore reject Williams's assertion that "there are no logical inferences of wrongdoing that may be inferred from the flight of the passenger under all the circumstances of this case."

Police concern for their own safety also justified seizing Williams at gunpoint. Concern for police safety is the touchstone of a *Terry* stop. *Terry*, 392 U.S. at 30-31, 88 S. Ct. at 1884-85. Under the facts presented, it was reasonable for police to suspect that any of the car's occupants could be armed. "An officer is justified in proceeding cautiously with weapons ready if he is making a reasonable investigatory stop and has cause to believe an individual may be armed." *State v. Ailport*, 413 N.W.2d 140, 144 (Minn. App. 1987). At 3:30 a.m., each of the occupants was in a car connected to a felony that involved the use of a dangerous weapon or the infliction of bodily harm. See Minn. Stat. § 609.245, subd. 1 (2014) (stating that, "[w]hoever, while committing a robbery, is armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or inflicts bodily harm upon another, is guilty of aggravated robbery in the first degree"). When the car was finally stopped, Williams ran. At that point, Pearson had reason to believe that anyone in the car may be armed.

Finally, although Williams makes a plausible argument that he fled because he feared what the police would do to him, the legality of a *Terry* stop depends on the

reasonableness of police suspicions about the suspect's participation in criminal activity, not on the subjective beliefs of the defendant. *See Davis*, 732 N.W.2d at 182. Under all of the circumstances of this case, police suspicions that criminal activity was afoot were reasonable.

Affirmed.