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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0771**

State of Minnesota,
Respondent,

vs.

Song John Vue,
Appellant.

**Filed April 2, 2018
Affirmed
Reyes, Judge**

Ramsey County District Court
File No. 62-CR-16-6444

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kate M. Baxter-Kauf, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Schellhas, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

REYES, Judge

On appeal from his convictions of being an ineligible person in possession of a
firearm and ammunition, appellant argues that: (1) the district court erred in denying his

motion to suppress evidence; (2) his due-process rights were violated because the state failed to preserve crucial evidence; and (3) his trial counsel was ineffective. Appellant also makes a number of arguments in his pro se supplemental brief. We affirm.

FACTS

Shortly before 5:00 p.m. on September 6, 2016, Officer Wilkinson and Officer Conley, two Metro Transit Police Officers stationed in the Metro Transit office in downtown St. Paul, were monitoring the intersection of Fifth Street and Cedar Avenue through their office window. Officer Wilkinson saw a man holding a duffel bag, later identified as appellant Song John Vue, who appeared to be approaching, selling, and distributing cigars to numerous people over the span of several minutes in violation of a St. Paul City ordinance. The officers exited the Metro Transit office to speak with appellant and called for backup from the St. Paul Police Department.

Officer Wilkinson made eye contact with appellant as they approached him. He told appellant that he wanted to speak with him and instructed him to put his hands behind his back. Appellant backed away from the officers and looked around, which Officer Wilkinson perceived was an attempt to find an escape route. Officer Wilkinson grabbed appellant's arm and repeatedly told him to put his hands behind his back. Appellant did not do so. The struggle continued, and Officer Wilkinson told appellant that he was under arrest numerous times. Officer Wilkinson eventually attempted to render appellant unconscious through a vascular neck restraint because he was physically resisting arrest, but was ultimately unsuccessful.

Officer Wilkinson saw appellant's right arm and hand reach toward his right hip area. Appellant pulled out a loaded .38 revolver and Officer Wilkinson yelled, "Gun! He's got a gun!" Officer Wilkinson didn't see what happened next, but he did see the gun on the ground and Officer Conley stepping on it as he brought appellant to the ground and secured him in handcuffs. The officers searched the duffel bag on appellant's person and found cigars, a pack of cigarettes, and six rounds of ammunition.

On September 8, 2016, the state charged appellant with one count of possession of a firearm by an ineligible person and one count of possession of ammunition by an ineligible person. Both are violations of Minn. Stat. § 624.713, subd. 1(2). That day, appellant was arraigned and filed a motion to suppress.

After a contested omnibus hearing, the district court denied appellant's motion to suppress. Appellant stipulated to the state's case in order to obtain review of the district court's pretrial ruling pursuant to Minn. R. Crim. P. 26.01, subd. 4. The district found appellant guilty of both charges, sentenced him to 60 months imprisonment, and denied his motion for a downward dispositional departure.

This appeal follows.

D E C I S I O N

I. The district court did not err in denying appellant's motion to suppress.

Appellant argues that the district court erred in denying his motion to suppress evidence because: (1) the officers did not observe any behavior that gave rise to reasonable suspicion that justified an investigatory stop; (2) appellant did not violate the St. Paul City

Ordinance; and (3) appellant's presence in a high-crime-rate area did not justify his investigatory stop. We are not persuaded.

When reviewing a pretrial order on a motion to suppress, we review the district court's factual findings for clear error. *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012). We review the district court's legal determinations, including a determination of reasonable suspicion, de novo. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011).

Both the United States and Minnesota Constitutions protect against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer may temporarily detain a suspect without probable cause if (1) "the stop was justified at its inception" by reasonable articulable suspicion of wrongdoing and (2) "the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (citing *Terry v. Ohio*, 392 U.S. 1, 19-21, 88 S. Ct. 1868, 1878-1880 (1968)). The reasonable-suspicion standard is not high. *Diede*, 795 N.W.2d at 843. An officer need only have a reasonable, particularized suspicion that criminal activity is afoot to justify an investigatory stop. *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884.

Here, the officers had reasonable suspicion of appellant engaging in criminal activity. During the omnibus hearing, Officer Wilkinson testified that he and Officer Conley were monitoring that particular area because it is a high-crime area that generates the most calls to the Metro Transit Police. He also testified that he observed appellant receive money in exchange for cigars. This, coupled with inferences that a reasonable officer would have in that situation, including a potential violation of a St. Paul City

ordinance for the illegal sale of tobacco, is sufficient to justify approaching appellant to briefly detain him.

Appellant argues that the officers did not have reasonable suspicion to justify an investigatory stop, specifically because he did not commit an actual violation of a St. Paul City ordinance. Appellant's argument is unavailing because "an actual violation is not necessary." *State v. Haataja*, 611 N.W.2d 353, 354 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. July 25, 2000).

Appellant also argues that he did not have any small bills on his person, which is demonstrative of the officers' lack of reasonable suspicion. This also does not contribute to the reasonable-suspicion analysis because reasonable suspicion does not focus on what the officers subsequently learned after arresting appellant when they searched the contents of his duffel bag. *See State v. Martinson*, 581 N.W.2d 846, 850 (Minn. 1998) ("The principal components of a determination of reasonable suspicion will be the events which occurred leading up to the stop or search" (quotation omitted)).

Finally, appellant asserts that his presence in a high-crime area alone does not satisfy the reasonable-suspicion requirements. Although an individual's presence in a high-crime area does not by itself justify a stop, *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), "officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation." *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000). Here, appellant's presence in a high-crime area was not the sole factor justifying the officers' reasonable suspicion; rather, it was factor that contributed to their suspicion of wrongdoing.

Therefore, the investigatory stop was authorized and the district court did not err in denying appellant's motion to suppress evidence of the firearm and ammunition.

II. The district court did not err when it determined that appellant's due-process rights were not violated.

Appellant argues that the district court erred in denying his motion to suppress evidence because the state violated his due-process rights when it destroyed or failed to retain exculpatory evidence, as exhibited by the jump in one of the state's video exhibits.¹ We disagree.

"When constitutional issues involving due process are raised, this court reviews the trial court's legal conclusions de novo." *State v. Heath*, 685 N.W.2d 48, 55 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). "A defendant's right to due process of law is implicated when the State loses, destroys, or otherwise failed to preserve material evidence." *State v. Jenkins*, 782 N.W.2d 211, 235 (Minn. 2010). "To establish reversible error, a defendant must establish that the destruction of the evidence was intentional," *Heath*, 685 N.W.2d at 55, and that the evidence must have had an exculpatory value that was apparent prior to its destruction. *California v. Trombetta*, 467 U.S. 479, 489, 104 S. Ct. 2528, 2534 (1984). When the exculpatory value of evidence is not apparent, as here, a defendant is required to show the state's bad faith. *Heath*, 685 N.W.2d at 55-56.

Here, the district court did not err when it determined that appellant's due-process rights were not violated. During the omnibus hearing, Officer Wilkinson testified that he

¹ One of the state's video exhibits did not record the portion of the encounter where Officers Wilkinson and Conley approached appellant, the struggle ensued, and the officers arrested him.

had no involvement in the chain of custody for the state's video exhibit and that he had no reason to believe that Metro Transit would alter any of its video evidence. Appellant did not testify during the omnibus hearing or offer any evidence to support its due-process claim or refute the officer's testimony. Appellant's due-process rights were not violated because he did not show bad faith on the part of the state. *See Jenkins*, 782 N.W.2d at 235.

III. Appellant's ineffective-assistance-of-counsel claim and pro se claims are not properly before this court.

Appellant argues that he received ineffective assistance of counsel. In addition, appellant argues in his pro se brief that: (1) his right to confront witnesses was violated; (2) the district court abused its discretion in giving the appearance of impropriety; and (3) his right to a fair trial was violated because the chain of custody of the video could not be accounted for. These issues were not part of the district court's pretrial order denying appellant's motion to suppress evidence. Thus, they are not properly before this court because, on a stipulated-evidence trial pursuant to Minn. R. Crim. P. 26.01, subd. 4, our "review is limited to the pretrial order that denied the motion to suppress." *State v. Sterling*, 782 N.W.2d 579, 581 (Minn. App. 2010).

Affirmed.