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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1412**

State of Minnesota,
Appellant,

vs.

Xavier Richard Jamieson,
Respondent.

**Filed March 5, 2018
Reversed and remanded
Larkin, Judge**

Sibley County District Court
File No. 72-CR-17-137

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Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

In this pretrial prosecution appeal, the state challenges an order granting respondent's motion to suppress drug evidence seized during a pat frisk and dismissing the resulting fifth-degree controlled-substance charge. We reverse and remand.

FACTS

Appellant State of Minnesota charged respondent Xavier Richard Jamieson with fifth-degree possession of a controlled substance after a sheriff's deputy found a small container of methamphetamine on him during a pat frisk. Jamieson moved to suppress the evidence, arguing that it was obtained during an unconstitutional warrantless search. The district court held an evidentiary hearing on the motion, at which the state presented the testimony of one witness in support of the search.

Deputy Alex Nelson testified that he was part of a team of officers that executed a search warrant on a residence on April 25, 2017. The warrant was primarily for items related to controlled-substance crimes.¹ The search warrant authorized the search of the residence, and not any particular individual. Deputy Nelson was briefed regarding the warrant and received information that an assault with a baseball bat had taken place at the residence.

Deputy Nelson testified that as the execution team approached the residence, Jamieson was outside the residence and hurried inside when he noticed the officers

¹ The search warrant is not part of the record.

approaching. Deputy Nelson was concerned because he thought Jamieson might obtain a weapon or discard evidence.

Deputy Nelson testified that another deputy knocked on the door and clearly announced that they were executing a search warrant. Jamieson answered the door. Deputy Nelson testified that he did not see Jamieson with a weapon, and he told Jamieson that he was not under arrest. However, Deputy Nelson grabbed Jamieson and detained him to ensure officer safety. When asked if he had any weapons, Jamieson stated he had a knife. Deputy Nelson removed a knife from Jamieson's pocket and asked him if he had "anything else that would harm [Deputy Nelson]." Jamieson replied that he had some hypodermic needles in his pocket. Deputy Nelson recovered the needles and continued to frisk Jamieson. Deputy Nelson felt a cylindrical object in Jamieson's coat pocket, which he believed to be a marijuana grinder. Deputy Nelson asked what the object was, but Jamieson did not tell him. Deputy Nelson removed the object from Jamieson's pocket, which turned out to be a container with a crystal-like substance inside. Deputy Nelson recognized the substance as methamphetamine, and the substance field-tested positive for methamphetamine.

Deputy Nelson testified that he searched Jamieson "initially strictly for officer safety issues and to establish that he was not armed." During cross-examination, Deputy Nelson testified that he placed Jamieson in handcuffs but could not recall whether he did so before or after searching him.

The district court received written arguments regarding the constitutionality of the search. Jamieson argued that because the warrant did not identify him as a person to be

searched and the state did not establish that an exception to the warrant requirement applied, the evidence obtained during the frisk should be suppressed. The district court found Deputy Nelson's testimony to be truthful. However, the district court ruled that "the continued search of [Jamieson] exceeded the scope of a *Terry* search and therefore the evidence seized must be suppressed." Because the district court suppressed the evidence on which the charge was based, it dismissed the charge against Jamieson. The state appeals.

DECISION

I.

When the state appeals a pretrial suppression order, it "must 'clearly and unequivocally' show both that the [district] court's order will have a 'critical impact' on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quoting *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995)). Critical impact is established if "the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *State v. Kim*, 398 N.W.2d 544, 551 (Minn. 1987). "Dismissal of a complaint satisfies the critical impact requirement." *State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001), *review dismissed* (Minn. June 22, 2001).

II.

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. "The touchstone of the

Fourth Amendment is reasonableness.” *State v. Johnson*, 813 N.W.2d 1, 5 (Minn. 2012) (quotation omitted). “Generally, warrantless searches are per se unreasonable.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). Evidence seized in violation of the U.S. or Minnesota Constitutions must be suppressed. *Terry v. Ohio*, 392 U.S. 1, 13, 88 S. Ct. 1868, 1875 (1968); *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011).

“[Appellate courts] review de novo a district court’s ruling on constitutional questions involving searches and seizures.” *State v. Anderson*, 733 N.W.2d 128, 136 (Minn. 2007). “When reviewing pretrial orders on motions to suppress evidence, [appellate courts] may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Although Jamieson raised several grounds for dismissal in district court, the district court’s ruling was expressly limited to one: whether the officers unlawfully expanded the scope of a *Terry* frisk. Specifically, the district court ruled, “the continued search of [Jamieson] exceeded the scope of a *Terry* search and therefore the evidence seized must be suppressed.” The district court’s ruling did not address whether there was a lawful basis to seize Jamieson or to conduct a pat frisk for officer safety. Nonetheless, those issues are relevant to our determination regarding whether the scope of the search exceeded constitutional limitations, and the parties have addressed them. In the interest of thorough review, we therefore consider whether the police acted lawfully in seizing Jamieson, pat frisking him, and removing the container from his jacket pocket.

The Initial Seizure

In *Michigan v. Summers*, the Supreme Court held that “a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted.” 452 U.S. 692, 705, 101 S. Ct. 2587, 2595 (1981). This authority is especially important during drug-related cases due to the strong possibility of flight, violence, or destruction of evidence. *Id.* at 702, 101 S. Ct. at 2594.

[T]he execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence. The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.

Id. at 702-03, 101 S. Ct. at 2594 (footnote omitted).

The Court in *Summers* explained that the following three legitimate law enforcement interests provide substantial justification for detaining an occupant during execution of a search warrant: “preventing flight in the event that incriminating evidence is found,” “minimizing the risk of harm to the officers,” and facilitating “the orderly completion of the search,” as detainees’ “self-interest may induce them to open locked doors or locked containers to avoid the use of force.” *Id.* An officer’s authority to detain incident to a search is categorical; it does not depend on the “quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure.” *Id.* at 705 n.19, 101 S. Ct. at 2595 n.19. In *Bailey v. United States*, the Supreme Court noted that “[t]he rule in *Summers* extends further than some earlier exceptions [to the probable-cause requirement] because it does not require law enforcement to have particular suspicion that an individual

is involved in criminal activity or poses a specific danger to the officers.” 568 U.S. 186, 193, 133 S. Ct. 1031, 1037-38 (2013).

The Minnesota Supreme Court has recognized, consistent with federal caselaw, that “ordinarily a search warrant to search for contraband carries with it the limited authority to detain the occupants of the premises while the search is conducted.” *State v. Wynne*, 552 N.W.2d 218, 222 (Minn. 1996) (citing *Summers*, 452 U.S. at 705, 101 S. Ct. at 2595-96). This court applied that principle when assessing the validity of a search of an overnight guest who was present in a home when a search warrant was executed at the home. *State v. Wasson*, 602 N.W.2d 247, 249, 251 (Minn. App. 1999) (“A search warrant that does not expressly allow a search of persons provides only the limited authority to detain, not search, unarmed individuals present during the execution of the warrant.”), *aff’d on other grounds*, 615 N.W.2d 316 (Minn. 2000).

Under the authorities discussed above, Jamieson’s temporary detention in the residence pending execution of the warrant was constitutionally reasonable because Jamieson was inside the residence when the police executed a search warrant in a drug-related case.

The Initial Pat Frisk

A warrantless search is generally unreasonable unless it falls within an exception to the Fourth Amendment’s warrant requirement. *Missouri v. McNeely*, 569 U.S. 141, 148, 133 S. Ct. 1552, 1558 (2013). The Supreme Court established one such exception in *Terry v. Ohio*, holding that a law-enforcement officer may conduct a protective pat search of the outer clothing of a person whom the officer has lawfully detained if the officer has a

reasonable, articulable suspicion that the person may be armed and dangerous. 392 U.S. at 26-27, 88 S. Ct. at 1882-83.

A pat search must be lawful at its inception, which means that reasonable, articulable suspicion must exist when the pat search begins. *See Terry*, 392 U.S. at 21-22, 88 S. Ct. at 1880 (holding that the justification for a search depends on “the facts available to the officer at the moment of the . . . search”). This court evaluates whether reasonable, articulable suspicion exists from the perspective of a trained police officer, who may make “inferences and deductions that might well elude an untrained person.” *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 695 (1981).

“The legality of a pat search depends on an objective examination of the totality of the circumstances.” *State v. Lemert*, 843 N.W.2d 227, 230 (Minn. 2014). The searching officer’s motive does not invalidate “objectively justifiable behavior under the Fourth Amendment,” except in cases involving inventory searches or administrative inspections. *Whren v. United States*, 517 U.S. 806, 812, 116 S. Ct. 1769, 1774 (1996). “The actual, subjective beliefs of the officer are not the focus in evaluating reasonableness.” *State v. Koppi*, 798 N.W.2d 358, 363 (Minn. 2011).

A search warrant that does not expressly authorize a search of persons provides only the limited authority to detain, and not to search, unarmed individuals present during the execution of the warrant. *Wynne*, 552 N.W.2d at 222. Thus, a person’s mere presence at premises being searched would not in itself ordinarily justify a search for weapons. *State v. Gobely*, 366 N.W.2d 600, 602 (Minn. 1985). However, a *Terry* pat frisk may occur during the execution of a search warrant if the reasonable-articulable-suspicion

requirement is met. *See Ybarra v. Illinois*, 444 U.S. 85, 92-93, 100 S. Ct. 338, 343 (1979) (applying *Terry* standard to protective pat frisk that occurred during execution of search warrant).

Here, Deputy Nelson testified that the search warrant was primarily for items related to controlled-substance crimes and that he had been informed that a person had been assaulted with a baseball bat in the residence. Deputy Nelson testified that based on his training and experience, he knows that people suspected of possessing, selling, or using drugs often carry weapons and commit crimes that go unreported. Deputy Nelson testified that he handcuffed and “detain[ed] [Jamieson] to protect the other officers and also for [his own] safety” and that he believed it was appropriate to pat frisk Jamieson “initially strictly for officer safety issues and to establish that he was not armed.”

Although the record does not describe the type of controlled-substance crimes that prompted the warrant, the alleged assault, or Jamieson’s role in those offenses, the circumstances nonetheless objectively justified the limited intrusion occasioned by a pat frisk for officer safety. Deputy Nelson’s belief that a person had been assaulted in the residence with a baseball bat, combined with the suspected presence of items related to controlled-substance crimes, provided a reasonable basis to suspect that Jamieson could be armed and dangerous. We recognize that Jamieson may have been handcuffed during the pat frisk. But the Minnesota Supreme Court has held that handcuffing suspects briefly until the police can determine whether they are armed is a reasonable step to allow officers to safely conduct an investigation. *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999).

We therefore conclude that the pat search was reasonable at its inception, even if Jamieson was handcuffed during the search.

The Scope of the Pat Frisk

We now turn to the stated basis for the district court's suppression order: "the continued search of [Jamieson] exceeded the scope of a *Terry* search." Jamieson argues that it was "impermissible for Deputy Nelson to remove the container from [his] coat pocket."

A protective pat frisk "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.'" *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). However, an officer is entitled to seize contraband, including drug paraphernalia, found during a pat frisk if the incriminating character of the contraband is immediately apparent to the officer. *Id.* at 375-76, 113 S. Ct. at 2137. Jamieson argues that "it was not immediately apparent to Deputy Nelson that the container was contraband."

The phrase "immediately apparent" does not mean that an officer must be certain about the object's identity. In fact, the Supreme Court has stated that "'immediately apparent' was very likely an unhappy choice of words, since it can be taken to imply that an unduly high degree of certainty as to the incriminatory character of evidence is necessary." *Texas v. Brown*, 460 U.S. 730, 741, 103 S. Ct. 1535, 1543 (1983) (plurality decision). The Supreme Court explained that a seizure based on an object's immediately apparent criminal character is "presumptively reasonable, assuming that there is probable

cause to associate the property with criminal activity.” *Id.* at 738, 103 S. Ct. at 1541 (quotation omitted). Probable cause requires an honest and strong suspicion. *See State v. Skoog*, 351 N.W.2d 380, 381 (Minn. App. 1984) (concluding seizure of a snow blower was supported by probable cause to believe it was stolen property). We therefore consider whether Deputy Nelson had an honest and strong suspicion that the item he felt during the pat search was associated with criminal activity.

Deputy Nelson’s testimony demonstrates that it was “immediately apparent” to him that the object in Jamieson’s pocket was contraband. He testified that he “felt a cylindrical object [that], based on [his] experience and training, [he] believed to be a marijuana grinder.” Although he did not testify that he was certain the object was a marijuana grinder, the “immediately apparent” standard does not require absolute certainty. *Brown*, 460 U.S. at 742, 103 S. Ct. at 1543.

The district court “accept[ed] as evidence the truthful testimony of Deputy Alex Nelson as to the events leading up to the search and arrest of [Jamieson]” and found that Deputy Nelson believed that “the cylindrical object that he felt while pressing the outside of [Jamieson’s] jacket was . . . a marijuana grinder.” We defer to this credibility determination. *See State v. Miranda*, 622 N.W.2d 353, 358 (Minn. App. 2001) (“Weighing the credibility of the witnesses is the exclusive province of the factfinder. This court defers to the district court’s ability to judge the credibility of witnesses.” (citation omitted)). Because the incriminating character of the object was immediately apparent to Deputy Nelson, his removal of the object from Jamieson’s pocket was permissible.

Conclusion

Based on our independent review of the facts, we reach three conclusions. First, there was a lawful basis to temporarily seize Jamieson based on his presence in the residence during execution of a search warrant for items related to controlled-substance crimes. Second, there was a lawful basis to pat frisk Jamieson for officer safety based on the reported assault within the residence and the suspected presence of items related to controlled-substance crimes. And third, Deputy Nelson did not exceed the permissible scope of the pat frisk by removing the cylindrical object from Jamieson's pocket during the search. We therefore reverse and remand for further proceedings consistent with this opinion without addressing the state's alternative argument that the search was a valid search incident to arrest.

Reversed and remanded.