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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0798**

State of Minnesota,
Respondent,

vs.

Guytrell Edward Hawkins,
Appellant.

**Filed April 22, 2019
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-CR-17-3414

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi L. Proulx, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Smith,

Tracy M., Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's pretrial denial of his motion to suppress evidence following his conviction of possession of a firearm by an ineligible person. We affirm.

FACTS

In May 2017, there was a homicide in a St. Paul neighborhood. The police had descriptions of two men who were suspected of committing the homicide. One of the suspects was described as a black male in his mid-twenties who was five feet, eight inches tall, average build, and had a medium afro and goatee. The police had a photograph of this suspect in addition to the description.

The day after the homicide, two police officers canvassed the area looking for the suspects. The officers observed two men standing together on the sidewalk who appeared to be looking around to see if anyone was watching them. After observing the men, the officers determined that one of them, later identified as appellant Guytrell Edward Hawkins, resembled the murder suspect with the goatee. Hawkins was wearing a baseball cap.

The officers got out of the squad car and approached Hawkins. They showed him their badges and identified themselves as police officers. Hawkins had both his hands inside his jacket pockets. He did not reply, but stopped walking. When the officers asked Hawkins to remove his hands from his pockets, Hawkins did not respond. One of the officers then drew his gun and instructed Hawkins to remove his hands. Hawkins again

failed to respond. The other officer grabbed Hawkins's arm and a handgun with an extended magazine fell out of Hawkins's jacket. The officers ordered Hawkins to the ground. Hawkins complied, and the officers arrested him.

Hawkins was charged with two counts of possession of a firearm/ammunition by an ineligible person under Minn. Stat. § 624.713, subd. 1(2) (2016). He moved to suppress evidence of the gun and ammunition, challenging the validity of the stop, search, and seizure. The district court denied the motion. Hawkins moved the district court to reconsider, but the district court denied the motion. Hawkins stipulated to the state's case in order to obtain review of the pretrial ruling under Minn. R. Crim. P. 26.01, subd. 4. The district court found Hawkins guilty on both counts. This appeal follows.

D E C I S I O N

Hawkins challenges the district court's denial of his pretrial motion to suppress the firearm and ammunition found in his possession. Upon review of a pretrial order on a motion to suppress evidence, we review the district court's factual findings for clear error and the district court's legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). We review reasonable suspicion to justify a stop de novo. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). We consider the totality of the circumstances in determining whether a stop is justified. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

Hawkins contends that the officers' seizure of him was based only on his "general resemblance to the suspect" and that the officers lacked sufficient reasonable, articulable suspicion to seize him. The United States and Minnesota Constitutions prohibit

unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But brief investigatory stops are permissible if police have a “particularized and objective basis” for suspecting a particular person of criminal activity. *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003) (quotation omitted). Police need only reasonable, articulable suspicion of criminal activity to support a brief investigatory stop. *Id.* Reasonable, articulable suspicion requires that the stop is “not the product of mere whim, caprice or idle curiosity.” *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). Police may justify a decision to conduct a brief investigatory stop based on the totality of the circumstances and are permitted to make inferences and deductions based on their training. *State v. Harris*, 590 N.W.2d 90, 99 (Minn. 1999). The factual basis required to justify an investigative seizure is minimal. *Magnuson v. Comm’r of Pub. Safety*, 703 N.W.2d 557, 560 (Minn. App. 2005). For a seizure to be lawful, the basis for a seizure “must satisfy an objective test: would the facts available to the officer at the moment of the seizure warrant a man of reasonable caution in the belief that the action taken was appropriate.” *State v. Krenik*, 774 N.W.2d 178, 182 (Minn. App. 2009) (quotations omitted), *review denied* (Minn. Jan. 27, 2010).

Here, the officers had a photo of the man they were looking for—a black male with a medium build and goatee. They were canvassing the area near the crime scene when they saw Hawkins. The officers thought that Hawkins could be the man in the photo because he is a black man with a medium build and goatee. But the officer testified that it was not just Hawkins’s appearance that caught his attention. He also noticed Hawkins’s behavior. Hawkins and his companion were looking around as if to see if they were being watched. At that point, the officers decided to approach Hawkins to determine whether or not he was

the individual in the photo. On this record, we conclude that, based on Hawkins's similarity to the physical description and photograph of the suspect in addition to his location in the area close to where the homicide occurred, the officers had sufficient reasonable, articulable suspicion to support the stop and seizure.

Hawkins makes the additional argument that the officers seized him in an inappropriate manner. He contends that the officers approached him and immediately threw him to the ground without identifying themselves. The district court stated that it "[had] some difficulty in believing that." The district court noted that the officers were pursuing a suspect in a homicide involving a firearm and had cause to believe that the suspect they were searching for was armed. The district court credited the testimony of one of the officers who testified that he approached Hawkins and used a calm, soothing tone of voice when he asked Hawkins to remove his hands from his pockets. The officer also testified that he was looking at Hawkins's hands and became concerned for his safety when Hawkins did not take his hands out of his pocket as requested.

In its ultimate resolution of the differing accounts of what occurred, the district court stated:

So, I will just cite to *State v. O'Neill*, [216 N.W.2d 822, 828 (Minn. 1974)], which is another Minnesota Supreme Court case from 1974, that stands for the proposition that if an officer making a reasonable investigatory stop has cause to believe that the individual is armed—which in this case there was cause to believe that—that officer is justified in proceeding cautiously with weapons ready. Which can be very frightening for the average citizen. And, certainly, as Mr. Hawkins indicated, if you have no idea why the police are speaking to you, that can be extremely frightening. But given what the officers knew about a homicide committed with a firearm, they

were justified in proceeding cautiously and with their weapons ready.

We conclude that the district court did not err in its denial of Hawkins's motion to suppress evidence.

Affirmed.