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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1635**

State of Minnesota,
Respondent,

vs.

Willie Alonso Smith,
Appellant.

**Filed June 17, 2019
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-CR-16-3176

Keith Ellison, 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, Jessica Merz Godes, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of fifth-degree possession of a controlled substance, arguing that the district court erred by denying his motion to suppress. We affirm.

FACTS

Respondent State of Minnesota charged appellant Willie Alonso Smith with fifth-degree possession of a controlled substance after the police found marijuana in a bag, on the ground, near a vehicle that Smith had been driving. Smith moved the district court to suppress the marijuana evidence, and the district court held a contested evidentiary hearing on Smith's motion. Smith limited the contested issues to "whether law enforcement had probable cause to stop and seize [him] and his vehicle[,] and whether the subsequent warrantless search of [his person] and the vehicle was in violation of his constitutional rights."

At the hearing, the state presented the testimony of former St. Paul Police Officer Anthony Spencer¹ and St. Paul Police Officer Matthew Bravo. At around 6:00 pm on February 23, 2016, Officer Spencer was on patrol and observed a vehicle that he visually estimated to be traveling in excess of 40 miles per hour in a 30-mile-per-hour zone. Officer Spencer testified that as he pursued the vehicle, he believed that the vehicle's driver could see his marked squad car in the vehicle's rearview mirror. The vehicle quickly turned into

¹ Even though Spencer was no longer a police officer at the time of the evidentiary hearing, we refer to him as Officer Spencer in this opinion.

a driveway that led to a residence. Officer Spencer testified that at that point, he thought that the driver might be attempting to evade him, that the driver might be in the process of committing a crime, or the vehicle might be stolen. Officer Spencer passed the vehicle, turned around, and continued to observe the vehicle. He saw the driver exit the vehicle and approach the residence, but the driver did not make contact with anyone at the residence. The driver returned to the vehicle and entered it through the driver's door.

Officer Spencer continued to observe the vehicle and realized that, although he had not seen any of the vehicle's doors open, he could no longer see anyone in the driver's seat. Officer Spencer testified that he could only "see ankles and feet on the passenger's side" and that he considered this behavior suspicious when combined with the high rate of speed at which the vehicle had been traveling, the quick turn into the driveway, the lack of contact with the homeowner at the address, and the driver's exit of the vehicle on the passenger side, where Officer Spencer could not see him.

Officer Spencer drove toward the vehicle and called the driver, later identified as Smith, down into the street. As Smith approached, Officer Spencer observed that his fist was closed, concealing an unknown object. Officer Spencer testified that Smith was "belligerent and uncooperative," refused to identify himself, and refused to answer when asked why he had exited the vehicle through the passenger side. Smith denied that he had been in the vehicle that Officer Spencer had seen him driving. Based on Smith's attitude and his denial, Officer Spencer thought that Smith might have been engaged in illegal activity.

Officer Spencer asked Smith to open his fist, but Smith refused. Officer Spencer pried open Smith's hand and saw that he was holding a key. Officer Spencer took the key, handcuffed Smith, placed Smith in his squad car, and explained that he was detaining Smith while he conducted an investigation. Officer Spencer determined that the key fit the door of the vehicle that he had seen Smith driving.

Officer Spencer testified that he called for backup based on Smith's refusal to cooperate. Officers Matthew Bravo and Pil Jeon of the St. Paul Police Department arrived on the scene. Officer Bravo approached Smith's vehicle and found a black plastic bag on the ground near the rear tire, on the passenger side. Officer Bravo opened the bag and observed what appeared to be marijuana. The officers subsequently searched Smith's vehicle, but they did not find any contraband.

The district court denied Smith's motion to suppress, and Smith stipulated to the prosecution's case to obtain review of the court's pretrial ruling under Minn. R. Crim. P. 26.01, subd. 4. The district court found Smith guilty, entered judgment of conviction, stayed imposition of sentence, and placed him on probation for five years. Smith appeals.

D E C I S I O N

I.

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 and seizures are per se unreasonable. *State v. Horst*, 880 N.W.2d 24, 33 (Minn. 2016). But a police officer may stop and detain a person without a warrant for investigative purposes based on specific and articulable facts that create a reasonable suspicion of illegal activity. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000) (citing *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). “[T]he reasonable suspicion standard is not high,” but it requires more than an unarticulated “hunch.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotations omitted). An officer may not stop a person based on “mere whim, caprice, or idle curiosity.” *Marben v. State, Dep’t of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (quotation omitted).

In determining whether reasonable suspicion exists, Minnesota courts “consider the totality of the circumstances and acknowledge that trained law enforcement officers are permitted to make inferences and deductions that would be beyond the competence of an untrained person.” *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001). This court reviews a district court’s determination of reasonable suspicion de novo, but accepts the district court’s factual findings unless they are clearly erroneous. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

“[E]ach incremental intrusion during a stop must be ‘strictly tied to and justified by the circumstances which rendered [the initiation of the stop] permissible.’” *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (alteration in original) (quoting *Terry*, 392 U.S. at 19, 88 S. Ct. at 1878) (other quotation marks omitted). Under the Minnesota Constitution, “an intrusion not strictly tied to the circumstances that rendered the initiation

of the stop permissible must be supported by at least a reasonable suspicion of additional illegal activity.” *Smith*, 814 N.W.2d at 350.

Smith argues that “the stop of [his] vehicle was justified at its inception because Officer Spencer observed [him] speeding” and that “Spencer expanded the scope and duration of the stop beyond its original purpose when he seized Smith not for the purpose of investigating the speeding but for the purpose of investigating his ‘very suspicious’ behavior after he pulled into and parked in the driveway.” *See State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (“[I]f an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle.”). Smith further argues that “Spencer lacked a reasonable, articulable suspicion that [he] was engaged in criminal activity” and that Officer Spencer unlawfully seized him by “direct[ing] him to approach Spencer and respond to questions.”

Under the Minnesota Constitution, a seizure occurs when, given the totality of the circumstances, “a reasonable person in the defendant’s shoes would have concluded that he or she was not free to leave.” *In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993); *see also Askerooth*, 681 N.W.2d at 362 (explaining that article I, section 10 of the Minnesota Constitution provides greater protection than the Fourth Amendment, under which a seizure only occurs when the police use physical force or a person submits to a show of authority by the police). Smith’s argument suggests that there were two seizures in this case: “the stop of [his] vehicle” and Officer Spencer’s act of “direct[ing] him to approach [the officer] and respond to questions.”

As to Smith's reference to "the stop of [his] vehicle," there is no evidence that Officer Spencer stopped Smith's vehicle. Officer Spencer did not use his squad car lights—or any other means—to lead Smith to conclude that he was required to stop his vehicle. *See State v. Hanson*, 504 N.W.2d 219, 220 (Minn. 1993) (noting that an officer's use of flashing squad lights in many situations "would signal to a reasonable person that the officer is attempting to seize the person for investigative purposes"). Instead, the record indicates that Smith pulled off of the roadway, parked, and got out of his vehicle based on his own volition. Thus, Smith's seizure did not begin with a "stop" of his vehicle.

Instead, Smith's seizure began when Officer Spencer approached Smith, as Smith stood outside of his vehicle, and directed Smith to approach the officer for questioning. *See E.D.J.*, 502 N.W.2d at 782-83 (stating that although the police generally may approach an individual and ask questions without seizing that individual, it is a seizure where the police direct the individual to stop); *State v. Day*, 461 N.W.2d 404, 407 (Minn. App. 1990) (holding that police officer's action of "summoning" defendant to "approach the officer's squad car to provide identification and to respond to questioning" constituted a seizure under the Fourth Amendment), *review denied* (Minn. Dec. 20, 1990). We therefore disagree with Smith's suggestion that this case involves an unlawful expansion of a vehicle "stop." Officer Spencer did not stop Smith's vehicle; he seized Smith after Smith parked and exited his vehicle. We therefore consider whether Officer Spencer had reasonable, articulable suspicion when he did so.

Officer Spencer testified that Smith's evasive conduct caused him to suspect that he "may have interrupted a crime in progress." Evasive behavior is a pertinent factor in a

reasonable-suspicion determination. *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000). In fact, evasive conduct alone may give rise to reasonable suspicion justifying an investigative seizure. See *State v. Petrick*, 527 N.W.2d 87, 87-89 (Minn. 1995) (concluding that officer articulated sufficient grounds for traffic stop based solely on evasive driving conduct).

For example, in *State v. Johnson*, the supreme court reasoned:

As we see it, the issue is partly a semantic question depending on what one means when one says that the defendant engaged in evasive conduct. On the one hand, if a driver merely appears startled at the sight of a police officer passing him and then slows down a bit and if a reasonable police officer would not infer any wrongdoing from the driver's response, then the officer does not have a particular and objective basis for suspecting the driver of criminal activity and may not stop the driver. On the other hand, *if the driver's conduct is such that the officer reasonably infers that the driver is deliberately trying to evade the officer and if, as a result, a reasonable police officer would suspect the driver of criminal activity, then the officer may stop the driver.*

444 N.W.2d 824, 826-27 (Minn. 1989) (emphasis added).

The supreme court in *Johnson* concluded that evasive driving conduct justified an investigative seizure, reasoning:

In this case, the trooper did not base his decision to stop on mere whim, caprice, or idle curiosity. Moreover, the trooper did not base his decision to stop solely on the fact that the defendant made a quick turn off the highway seconds after he looked the trooper in the eye. The trooper also observed the defendant turn off the secondary street into a driveway or side street and then resume his driving on the highway within a minute after turning off the highway. While [the] defendant's behavior may have been consistent with innocent behavior, it also reasonably caused the officer to suspect that [the] defendant was deliberately trying to evade him. In short, the

record we have on appeal in this case indicates that the trooper reasonably inferred that [the] defendant was deliberately trying to evade him and that, as a result, the trooper reasonably suspected petitioner of wrongdoing.

Id. at 827 (quotation omitted).

Like the driver in *Johnson*, Smith deviated from the direction that he had been traveling after he noticed a police presence. Smith turned into a driveway, approached a residence, returned to his vehicle without contacting anyone in the residence, and later exited the vehicle on the passenger side, where Officer Spencer was less likely to see him. That evidence of evasive conduct is as strong as the evasive conduct in *Johnson*. Moreover, Smith's initial seizure was not based on evasive conduct alone; it was also based on his traffic violation. Smith's traffic violation, combined with his evasive conduct, created reasonable suspicion of criminal activity, justifying his seizure for investigatory purposes.

Smith relies on *State v. Davis*, 910 N.W.2d 50 (Minn. App. 2018), to argue that Officer Spencer did not have reasonable suspicion to seize him. In *Davis*, police saw a vehicle turn without signaling. 910 N.W.2d at 53. The officers lost sight of the vehicle, and when they saw it again, it was pulling away from a curb. *Id.* The officers saw Davis standing in a yard and suspected that he had been a passenger in the vehicle. *Id.* Davis looked away from the officers and started walking away quickly. *Id.* An officer grabbed Davis, handcuffed him, and began asking him questions. *Id.*

This court stated that Davis's suspected presence in a vehicle that had failed to signal a turn, combined with his actions indicating he did not want to interact with police, "support[ed] nothing more than a hunch, a mere whim, or a guess that Davis had violated

or was about to violate some law.” *Id.* at 54. This court affirmed the district court’s ruling that the stop was unconstitutional because the circumstances “fell far short of constituting specific and articulable facts that create a reasonable suspicion of illegal activity.” *Id.*

Davis is distinguishable from this case. In *Davis*, the police handcuffed the defendant and began questioning him based on his suspected presence in a vehicle that had been used in the commission of a minor traffic violation and on his apparent lack of interest in speaking to police. *Id.* at 53. Here, Smith himself violated a traffic law and then engaged in evasive conduct after noticing a police presence. Unlike *Davis*, the circumstances here created reasonable suspicion of criminal activity, which justified Smith’s seizure for investigative purposes.

II.

Smith contends that “because Spencer lacked probable cause to believe [he] had committed or was about to commit a crime,” he was subjected to “an unlawful de facto arrest when, moments after seizing him, Spencer searched [him], handcuffed him, and confined him in a squad car.”² “[A] district court’s legal conclusions related to a Fourth Amendment search and seizure are reviewed de novo.” *State v. Zornes*, 831 N.W.2d 609, 621 (Minn. 2013).

[T]here is a fine line between an arrest and an investigatory detention. It is not always apparent at what precise moment an arrest occurs. The action of the police officers must be judged

² The search to which Smith refers is Officer Spencer’s act of prying his hand open. Although Smith contends that Officer Spencer’s act was an unconstitutional search, he does not argue that he is entitled to suppression on that ground. Instead, he argues that the act was a use of force that contributed to the conversion of his investigatory seizure to a de facto arrest.

according to the circumstances existing at the time. But the determination whether an arrest occurs at the initial stop should not be decided solely by the conduct of the arresting officers or the amount of force they exhibit at the time.

State v. O'Neill, 216 N.W.2d 822, 827-28 (Minn. 1974) (citations omitted).

“The ultimate test to be used in determining whether a suspect was under arrest is whether a reasonable person would have concluded, under the circumstances, that he was under arrest and not free to go.” *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984) (citing *Florida v. Royer*, 460 U.S. 491, 103 S. Ct. 1319 (1983)). But as explained below, courts also consider officer safety when determining whether police conduct turned an investigative seizure into an arrest requiring probable cause.

There is no bright-line test separating a legitimate investigative stop from an unlawful arrest. Instead, common sense and ordinary human experience must govern over rigid criteria. In determining whether a police officer’s conduct turned an investigative stop into an unlawful arrest, courts must specifically consider the aggressiveness of the police methods and the intrusiveness of the stop against the justification for the use of such tactics, i.e., whether the officer had a sufficient basis to fear for his or her safety.

State v. Balenger, 667 N.W.2d 133, 139 (Minn. App. 2003) (quotation and citations omitted), *review denied* (Minn. Oct. 21, 2003).

“Unduly intrusive police conduct may, but does not automatically, transform an otherwise legitimate investigative stop into an unlawful arrest.” *Id.* The trend has been to grant officers greater latitude in using force in order to “neutralize” potentially dangerous suspects during an investigative stop. *Id.* (quotation omitted). “Thus, the use of force reasonable under the circumstances will be permitted without a showing of probable cause

when force is necessary for the protection of the investigating officers and the degree of force used is reasonable.” *Id.*

This case is somewhat similar to *State v. Carver*, in which an officer stopped the defendant’s vehicle after observing it speeding. 577 N.W.2d 245, 247 (Minn. App. 1998). The officer ordered the defendant to get out of his vehicle and assume the prone position on the road. *Id.* The officer then approached the defendant, handcuffed him, and placed him in the officer’s patrol car. *Id.* The officer testified that he took those precautions because of the way the vehicle went speeding past his patrol car without slowing down, because it was not clear to the officer why the defendant was speeding, and because the officer did not know the location of the nearest backup. *Id.* The district court granted the defendant’s motion to suppress evidence obtained after the defendant had been handcuffed and placed in the squad car. *Id.*

On appeal, the state argued that the *Carver* defendant was not under arrest when he was ordered to assume the prone position on the roadway and handcuffed. *Id.* This court reasoned that although ordering the defendant to lie on the ground did not constitute an arrest, the officer’s additional action of handcuffing the defendant “sufficiently restrained freedom of movement so as to give a reasonable person the belief that he was not free to go.” *Id.* at 248.

Like the circumstances in *Carver*, the police seized Smith, in part, for speeding, handcuffed him, and placed him in a squad car. But the circumstances here provide greater justification for the use of handcuffs and the squad-car detention because Smith’s seizure was also based on his evasive conduct and his uncooperative, belligerent behavior. In

addition, Officer Spencer told Smith that he was being detained for an investigation, which undercuts Smith's argument that a reasonable person would have concluded, under the circumstances, that he was under arrest. See *State v. Moffatt*, 450 N.W.2d 116, 117, 119-20 (Minn. 1990) (holding that hour-long detention in squad cars was investigative seizure, and not de facto arrest, in part because suspects were told that they were being detained and were not under arrest).

We are also influenced by the short duration of Smith's seizure. "[B]riefly handcuffing a suspect while the police sort out the scene of an investigation does not per se transform an investigatory detention into an arrest, nor does placing the suspect in the back of a squad car while the investigation proceeds." *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999). We note that the record indicates that the police found the marijuana outside of Smith's vehicle not long after Smith was detained in the squad car for investigatory purposes. Smith does not dispute that the discovery of that marijuana provided probable cause for his arrest. *State v. Carlson*, 267 N.W.2d 170, 173 (Minn. 1978) ("Probable cause exists where the facts would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that the person under consideration is guilty of a crime."). Thus, the record does not indicate that Smith's pre-probable-cause investigatory detention was unreasonably prolonged.

Ultimately, we must determine whether, under the totality of the circumstances, the facts available at the moment of the stop "would cause a person of reasonable caution to believe that the action taken was appropriate." *Balenger*, 667 N.W.2d at 139. Given the circumstances, it was reasonable for Officer Spencer to temporarily handcuff Smith and

detain him in the squad car while Officer Spencer completed his investigation, which quickly led to the discovery of marijuana and probable cause for an arrest. Officer Spencer's act of prying open Smith's clenched fist does not tip the balance in favor of a conclusion that his use of force was unreasonable and therefore resulted in a de facto arrest. *See id.* (stating that "use of force reasonable under the circumstances will be permitted without a showing of probable cause when force is necessary for the protection of the investigating officers and the degree of force used is reasonable").

In sum, Smith's investigative seizure was supported by reasonable suspicion, and Officer Spencer's actions during the seizure did not convert it to a de facto arrest. We therefore reject Smith's argument that the marijuana should have been suppressed as the fruit of an illegal seizure or an illegal arrest. *See State v. Jackson*, 742 N.W.2d 163, 177-78 (Minn. 2007) ("Generally, evidence seized in violation of the constitution must be suppressed.").

III.

Smith contends, for the first time on appeal, that "[e]ven if [he] was lawfully detained, and even if the marijuana was not suppressible as fruit of the poisonous tree, the warrantless seizure and search of the black plastic bag in which the marijuana was found was unconstitutional." Smith "acknowledges he did not make this specific argument in the district court" but nonetheless argues that this court can review the seizure and search of the bag.

Appellate courts generally do not decide issues that are raised for the first time on appeal. *State v. Roby*, 463 N.W.2d 506, 508 (Minn. 1990). Moreover, when a defendant

stipulates to the prosecution's case to obtain review of a dispositive pretrial ruling, as is the case here, this court's review is limited to that pretrial ruling. See Minn. R. Crim. P. 26.01, subd. 4(a) ("When the parties agree that the [district] court's ruling on a *specified pretrial issue* is dispositive of the case, . . . the following procedure must be used to preserve *the issue* for appellate review." (emphasis added)); *id.*, subd. 4(f) (stating that "appellate review will be of the pretrial issue"). The district court's order indicates that Smith limited the pretrial issues to "whether law enforcement had probable cause to stop and seize [him] and his vehicle and whether the subsequent warrantless search of [him] and the vehicle was in violation of his constitutional rights." Smith did not separately challenge the search of the black plastic bag; instead, he relied on the theory that the contents of the bag were suppressible as the fruit of his illegal seizure. Thus, the legality of that search is not properly before this court on appeal.

Smith argues that we should consider the search of the black plastic bag because we are obligated to decide cases in accordance with law. He relies on *State v. Hannuksela*, in which the supreme court said that "it is the responsibility of appellate courts to decide cases in accordance with law, and that responsibility is not to be diluted by counsel's oversights, lack of research, failure to specify issues or to cite relevant authorities." 452 N.W.2d 668, 673 n.7 (Minn. 1990) (quotation omitted).

In *Hannuksela*, the defendant challenged, in district court, the legality of a search, arguing that the underlying search warrant was not adequately particular. *Id.* at 670, 672. On appeal, the supreme court agreed that one line in the warrant allowed unconstitutional "rummaging" and was not adequately particular. *Id.* at 673. The parties had not briefed

whether the severance doctrine should be applied to limit the suppression of evidence based on the unlawful search to evidence discovered as a result of the single unconstitutional line. *Id.* at 673 & n.7. In sum, the new issue that the supreme court considered related to the remedy for the constitutional violation that was properly before the court. Those are not the circumstances here. Smith attempts to assert an entirely new constitutional violation as a basis for suppression: the constitutional validity of the search of the black plastic bag. Smith may not do so in this appeal.

Affirmed.