

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1726**

State of Minnesota,
Respondent,

vs.

Denarro Jesse Cunningham,
Appellant.

**Filed December 14, 2020
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-CR-18-25682

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Melissa Sheridan, Assistant Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BRYAN, Judge

In this direct appeal from the judgment of conviction for unlawful possession of a firearm, appellant challenges the district court's denial of his motion to suppress evidence.

Because the officers involved had a particularized and objective basis to suspect appellant's involvement in criminal activity, we affirm the district court's decision.

FACTS

At around 11:00 p.m. on October 14, 2018, a confidential informant saw a male at Pennwood Market attempt to get into a closed store. The man then displayed and pointed a firearm at a car before leaving the store on foot. The informant described the person as a Black man wearing a brown jacket over a hoodie, blue jeans, white tennis shoes, and headphones. The informant told a police sergeant that the man headed north on Penn Avenue, on the west side of the street, towards Olson Memorial Highway.

The police sergeant relayed the information to two officers who were on patrol and near the location described by the informant. A few minutes after receiving the information, the two officers saw a man who matched the suspect's description in all respects except one. He was wearing blue jeans, white shoes, headphones, and a black jacket over a gray hoodie. He was walking north on Penn Avenue at Olson Memorial on the west side of the street. The officers did not see any other male who matched the description in the area. The officers stopped their squad car and immediately exited, frisked the man, and discovered two firearms. This man was identified as appellant Denero Jesse Cunningham.¹ Respondent State of Minnesota charged Cunningham with possession of a firearm by an ineligible person.

¹ The caption in the district court lists defendant as "Denarro Jesse Cunningham," and that spelling is used in the caption on appeal. Minn. R. Civ. App. P. 143.01 (directing that the title of an action "not be changed in consequence of [an] appeal"). Because Cunningham spells his name as Denero, we use that spelling here.

Cunningham moved to suppress evidence of the firearms as a result of an unlawful search. The district court denied Cunningham's motion. It found that the seizure was reasonable based on what the officers knew at the time—that an individual attempted to enter a locked store, that the suspect pointed a firearm at a car, that the suspect was traveling north on Penn Avenue, and that the suspect was wearing jeans, light colored shoes, a dark coat, a hooded sweatshirt, and headphones.

Regarding the color of Cunningham's jacket, the district court found that "[t]he difference in color between brown and black is not substantial enough to undercut the weight of the other corroborated details linking [Cunningham] to the suspected criminal activity, especially considering both brown and black are dark colors and the incident occurred in the dead of night." The district court found that, not only did Cunningham match the suspect's description, Cunningham was in the area that the informant described and traveling in the same direction as the suspect. Based on these facts, the district court concluded that the officers had a particularized and objective basis for suspecting Cunningham of criminal activity and that they legally stopped him to conduct an investigation.

Cunningham waived his right to a jury trial and agreed that the state could submit the case to the district court on stipulated facts, preserving for appeal his challenge to the investigatory stop. *See* Minn. R. Crim. P. 26.01, subd. 4. The district court found Cunningham guilty of possession of a firearm by an ineligible person. Cunningham appeals, challenging the district court's denial of his pretrial suppression motion.

DECISION

Cunningham argues that the police officers lacked reasonable suspicion because his description did not exactly match the information that the officers had received. The informant had described a person wearing a brown jacket, not a black jacket, like the one that Cunningham was wearing. We are not persuaded and affirm the district court's decision to deny Cunningham's suppression motion because the information provided the officers with a particularized and objective basis to suspect Cunningham of criminal activity.

Both the United States and Minnesota Constitutions prohibit "unreasonable searches and seizures." U.S. Const. amend IV; Minn. Const. art. I, § 10. "To determine whether this constitutional prohibition has been violated, we examine the specific police conduct at issue." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). The conduct at issue here is an investigative stop based on information received from a confidential source who observed illegal activity.

"To lawfully seize a person temporarily to investigate a crime, a police officer must have a reasonable, articulable suspicion that the person was or will be engaged in criminal activity." *State v. Wiggins*, 788 N.W.2d 509, 513 (Minn. App. 2010) (citing *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968)), *review denied* (Minn. Nov. 23, 2010). "[T]he reasonable suspicion showing is 'not high.'" *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quoting *Richards v. Wisconsin*, 520 U.S. 385, 394, 117 S. Ct. 1416, 1422 (1997)). But it must be based on specific, articulable facts that allow the officer to articulate "that he or she had a particularized and objective basis for suspecting the seized person of

criminal activity.” *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011) (quotation omitted). “Evidence obtained as a result of a seizure without reasonable suspicion must be suppressed.” *Id.* at 842.

Information provided by a reliable informant can satisfy the reasonable suspicion standard. *Timberlake*, 744 N.W.2d at 393. “But information given by an informant must bear indicia of reliability that makes the alleged criminal conduct sufficiently likely to justify an investigatory stop by police.” *Id.* at 393-94. There are six factors for determining the reliability of a confidential, but not anonymous, informant:

(1) a first-time citizen informant is presumably reliable; (2) an informant who has given reliable information in the past is likely also currently reliable; (3) an informant’s reliability can be established if the police can corroborate the information; (4) the informant is presumably more reliable if the informant voluntarily comes forward; (5) in narcotics cases, “controlled purchase” is a term of art that indicates reliability; and (6) an informant is minimally more reliable if the informant makes a statement against the informant's interests.

State v. Ross, 676 N.W.2d 301, 304 (Minn. App. 2004) (citing *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998)), *review denied* (Minn. June 15, 2004). Only the third factor is at issue in this case and, according to Cunningham, this factor precludes a determination of reasonable suspicion. When reviewing a district court’s pretrial-suppression ruling, we “accept the district court’s factual findings unless they are clearly erroneous” and “review de novo a district court’s determination of reasonable suspicion of illegal activity.” *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). In this case, neither party contests the district court’s factual findings on appeal, so we review the district court’s determination of reasonable suspicion de novo.

Cunningham maintains that the officers did not have a basis to suspect him of criminal activity because the informant stated that the suspect wore a brown jacket, and Cunningham wore a black one. We disagree. As the district court observed, both brown and black are darker colors and can appear similar to one another. This is especially true at 11:00 p.m. on an October night. Moreover, the informant’s description included several other details that matched Cunningham’s clothing. As described by the informant, Cunningham wore the dark colored jacket over a hoodie, and had on blue jeans, white shoes, and headphones. Finally, Cunningham was headed in the same direction and on the same side of the street as described by the informant. The officers—who arrived within minutes of receiving the information—did not see any other male who matched the description in the area. Therefore, the officers had reasonable, articulable suspicion that Cunningham was the person described by the informant who attempted to get into a closed store, displayed a firearm, and pointed it at a car.²

Cunningham also argues that, based on our holding in *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000), *review denied* (Minn. July 25, 2000), the police corroborated insufficient details to establish reasonable suspicion. We disagree for two reasons. First, *Cook* involved the review of a district court’s determination of probable cause, not reasonable suspicion.³ See 610 N.W.2d. at 669 (holding that the officer may have had “reasonable suspicion” to legally stop and question the defendant, but insufficient facts to

² Cunningham does not contest the finding that the informant saw the suspect point a firearm at a car.

³ Cunningham also does not argue that an arrest occurred or that the encounter required probable cause.

support probable cause to arrest at that time). Second, the analysis in *Cook* concerned the basis for the suspicion of illegal activity, not the identity of the suspect. *Id.* at 668. In *Cook*, this court concluded that while the informant provided an accurate physical description, the information could not support a finding of probable cause because the information failed to show “a basis of knowledge” and failed to support the claim that Cook sold drugs. *Id.* We stated that the informant’s suspicion of illegal activity must “be supplied directly, by first-hand information . . . or indirectly through self-verifying details” that go beyond general reputation or rumor. *Id.* The information provided by the informant in *Cook* regarding Cook’s illegal activity (selling drugs) included no direct or indirect basis of knowledge. *Id.* By contrast, the informant in this case explained the direct, first-hand basis for the informant’s suspicion: the informant personally saw the suspect point a gun at a car. For those reasons, *Cook* does not apply.

In sum, the responding officers sufficiently corroborated several specific details from the information reported to believe that Cunningham was the person described by the informant. Therefore, the officers had a specific, articulable, and objective basis to suspect Cunningham of criminal activity when they initiated the investigative stop in this case.

Affirmed.