

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0254**

State of Minnesota,
Respondent,

vs.

Dillon Farkon Howard, Jr,
Appellant.

**Filed February 8, 2021
Reversed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-18-22523

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

Michael O. Freeman, Hennepin County Attorney, Jacqueline Bailey, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Jesson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Dillon Howard was driving a dirt bike without a headlight or a license plate on city streets in north Minneapolis when he was stopped by police. What began as a routine traffic stop quickly turned into a seizure, with Howard's hands cuffed behind his

back and, shortly thereafter, the fanny pack draped across his chest searched. The pack contained Howard's ID, drugs, and a gun. The state charged Howard with possession of a firearm or ammunition by a prohibited person.

In response to Howard's subsequent motion to suppress evidence of the gun, the district court ruled that handcuffing Howard was an illegal expansion of the traffic stop, unjustified by reasonable suspicion. But the district court concluded that Howard's "resistive" behavior after being handcuffed purged the taint of the officers' illegal conduct and denied Howard's motion to suppress the gun. Howard appeals.

We conclude that the district court applied the wrong legal standard when assessing whether Howard's behavior after the illegal seizure constituted an "intervening circumstance" which purged the taint of the illegal stop. Further, whether an intervening circumstance occurred is only one of four factors we consider in assessing this suppression issue. Based on our review of all the factors—and applying the correct legal standard to the facts found by the district court—we conclude the gun should have been suppressed as "fruit of the poisonous tree." Accordingly, we reverse.

FACTS

Below is a summary of the district court's findings of facts derived from its order denying Howard's motion to suppress evidence, followed by a summary of the district court proceedings.

During a routine patrol in north Minneapolis, two law enforcement officers spotted appellant Dillon Howard driving a dirt bike along Penn Avenue. The bike was unlicensed, did not have a headlight or taillight, and was not legal to drive on city streets. Concerned

that Howard might flee on his bike when stopped, the officers decided to stop him by pulling in front of the bike. As the officers testified, it is their typical practice after stopping the drivers of these types of vehicles to “just ID them, and you know, advise them to park it”

The dirt bike then slowed and came to a stop near the squad car. The body-camera footage (which the district court credited) shows that Howard neither backpedaled nor looked around. When the first officer approached Howard, he either asked Howard for his name or ID.¹ Howard immediately looked down at his chest and reached toward a fanny pack on the upper-left side of his chest. Although the officers testified that Howard was told many times to stop reaching and did not comply, the district court found that Howard “was told not to reach and quickly complied with officers’ demands.” And when the officers began to handcuff Howard, the district court found that the officers were able to do so “without incident.”

After handcuffing Howard, the first officer moved him off his bike and toward the squad car. Upon reaching the vehicle, the first officer suddenly pushed Howard against the side of the car. The officer yelled, “No, no. Don’t be f---ing reaching!” as he held Howard against the car. Howard responded, “I’m just trying to get my ID, sir.” A moment later, the officers took Howard to the ground as they yelled at him to stop reaching.

With Howard now on the ground, the first officer yelled “Are you stupid?” and “You want to be another statistic for being stupid?” The second officer asked Howard why he

¹ Although the first officer testified to only asking for Howard’s name, the second officer reported that Howard was advised “of the reason for the stop and asked if he had an ID.”

had been reaching, to which he again responded that he was trying to get his ID. Backup officers then arrived and assisted in getting Howard to his feet, removing his fanny pack, and frisking him. A search of the fanny pack revealed a .380-caliber semiautomatic handgun, some white pills, a baggie of marijuana, and Howard's ID. Based on the discovered gun, Howard was charged with possession of a firearm or ammunition by a prohibited person.²

Before trial, Howard moved the district court to suppress the evidence found in his fanny pack, alleging that the evidence had been tainted by the officers' misconduct. At an evidentiary hearing on the motion, the district court heard testimony from the officers involved in the initial stop. Because the officers' testimony "didn't jive with the way the video depicted [the first officer's] anger, his commands, [and] his comments," and "differed quite a bit" from the body-camera footage, the district court did not find the officers' testimony credible. Based on that credibility determination and the facts summarized above, the district court found that the officers impermissibly expanded the scope of the stop when they handcuffed Howard.

Nevertheless, the district court concluded that Howard's "erratic, resistive behavior" upon being handcuffed created independent justification to search Howard and his fanny pack. Citing *Terry v. Ohio*, the district court determined that the officers had reason to be concerned for their safety, which was reasonable under the circumstances, and therefore could search Howard for weapons. 392 U.S. 1, 27, 88 S. Ct. 1868, 1883 (1968) (holding

² Minn. Stat. § 624.713, subd. 1(2) (2018). Howard was previously convicted of fourth-degree assault.

that police may conduct a limited warrantless search of a person for weapons when “a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger”). Accordingly, the district court found that the discovery of the gun was lawful and denied Howard’s motion to suppress.

Following a stipulated-facts hearing, the district court convicted Howard of possession of a firearm or ammunition by a prohibited person. Minn. Stat. § 624.713, subd. 1(2). But because this was Howard’s first gun conviction and he was particularly amenable to probation, and because of the officers’ conduct during the stop, the district court granted a downward dispositional departure.³ The district court sentenced Howard to 60 months’ incarceration, but stayed the sentence for five years’ supervised probation with conditions.

Howard appeals the district court’s denial of his motion to suppress.

DECISION

Howard appeals from his conviction by arguing that the district court’s denial of his motion to suppress was in error. Here, no party challenges the district court’s pretrial factual findings, which we would review for clear error. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). And we review de novo the district court’s legal conclusions regarding a motion to suppress. *Id.*

³ According to the sentencing transcript, the district court found the officers’ conduct so concerning it contacted the Minneapolis Chief of Police to inform him of their actions during the stop.

We begin our de novo review with the observation that Howard does not contest the initial stop. Nor does the state contest the district court's holding that officers impermissibly expanded the scope of that stop by handcuffing Howard. These positions are grounded in the United States and Minnesota Constitutions which prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, a seizure conducted without a warrant is per se unreasonable. *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005). But an officer may conduct a limited investigatory traffic stop if (1) the stop is justified at its inception; and (2) the officer's actions are reasonably related to and justified by the circumstances that gave rise to the stop. *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004).

Here, the absence of a headlight and a license plate on a dirt bike driven on a city street provided justification for a limited traffic stop. But the district court concluded that no justification stood behind the officers' act to expand the stop by handcuffing Howard, which amounted to a seizure. No reasonable suspicion existed that Howard was involved in other criminal activity or armed and dangerous at the moment he was handcuffed.⁴

Which brings us to the question before us: based upon this unconstitutional expanded stop, did the district court err in allowing evidence of the handgun during Howard's trial? Typically, evidence that "would not have come to light but for the illegal actions of the police" is excluded from evidence as "fruit of the poisonous tree." *Wong*

⁴ We further observe that for suspected petty misdemeanors, such as operating a vehicle without a headlight or license plate, officers deciding to prosecute the individual "*must* issue a citation and *release* the defendant." Minn. R. Crim. P. 6.01 (emphasis added); *see also* Minn. Stat. § 169.89, subd. 1 (2018).

Sun v. United States, 371 U.S. 471, 488, 83 S. Ct. 407, 417 (1963). The reason for this exclusionary rule? Deterrence. To deter misconduct by law enforcement officers. *State v. Lindquist*, 869 N.W.2d 863, 868-69 (Minn. 2015) (“Although the Court has noted other purposes of the exclusionary rule, deterring police misconduct has become its touchstone.”); *see also Davis v. United States*, 564 U.S. 229, 236, 131 S. Ct. 2419, 2426 (2011) (“The [exclusionary] rule’s sole purpose, we have repeatedly held, is to deter future Fourth Amendment violations.”). This exclusionary rule is not ironclad. But once illegal actions by police are established—as they are here—the burden is on the state to prove that the evidence later obtained was “purged of the primary taint.” *Wong Sun*, 371 U.S. at 488, 83 S. Ct. at 417.

Our de novo review of whether the ensuing search of the fanny pack, yielding a gun, was purged of the underlying illegal police conduct is guided by four factors. We weigh: (1) the purpose and flagrancy of the misconduct; (2) the temporal proximity between the misconduct and the discovery of the evidence in question; (3) the likelihood that the evidence would have been found despite the misconduct; and (4) whether any intervening circumstances occurred to purge the taint of the misconduct. *State v. Sickels*, 275 N.W.2d 809, 814 (Minn. 1979). We consider these factors in light of the state’s burden to prove that the evidence in question was obtained in a way “sufficiently distinguishable” from the misconduct. *Wong Sun*, 371 U.S. at 488, 83 S. Ct. at 417. But no one factor is dispositive—all must be weighed. *Sickels*, 275 N.W.2d at 814.

Here, the purpose of the misconduct was not related to the initial traffic stop. *Id.* And only brief minutes separated Howard’s seizure and the discovery of the gun. A short

period of time between the misconduct and the discovery of evidence further weighs in favor of suppression. *Id.* Furthermore, although it is impossible to know with certainty whether the gun would have been found without the impermissible expansion of the stop, it appears possible that the officers might never have seen it. Not only was it dark during the stop, Howard's ID was located in a separate pocket of his fanny pack, away from the gun. Our de novo review of these first three factors, we observe, aligns with the analysis of the district court: all favor suppression of the gun.

The fourth factor lies at the heart of this analysis. Was Howard's "erratic, resistive behavior" after being handcuffed an intervening circumstance? We begin our analysis with the foundational premise that the exclusionary rule is designed to deter police misconduct, but not to embolden those subject to an illegal arrest to physically attack officers or to commit new crimes. 6 Wayne R. LaFare, *Search & Seizure: A Treatise on the Fourth Amendment* § 11.4(j) (6th ed. 2020). As a result, evidence discovered "after the intervening circumstances of a new crime" is generally admissible. *Id.* (emphasis omitted) (quotations omitted).

Applying this logic in the seminal case of *State v. Ingram*, this court addressed a situation where, after officers conducted an illegal stop of defendant and sought to frisk him, the defendant darted away from the bus shelter, pushing the officer away in the process. 570 N.W.2d 173, 178 (Minn. App. 1997), *review denied* (Minn. Dec. 22, 1997). The question before the court: did these actions constitute new and intervening facts sufficient to justify the subsequent pursuit and arrest of the defendant? Our court, beginning with the statement that "evidence of a crime committed in response to an illegal

police arrest or search is not suppressed as the fruit of the prior illegality,” concluded they did. *Id.* Resisting arrest and fleeing police, we held, stood in contrast to more predictable actions like the disposal of incriminating evidence. *Id.*; see also *State v. Baldur*, 514 N.W.2d 607, 611 (Minn. App. 1994) (describing the disposal of incriminating evidence as a “predictable and common response” to an illegal search).

We now take the question posed in *Ingram* and apply it to the case before us: where does Howard’s “erratic, resistive behavior” fall on the spectrum of behavior between evidence of a crime (like resisting arrest or fleeing) and a “predictable response” to an illegal seizure?

Here, we conclude that the state has not met its burden to demonstrate that Howard’s behavior after being handcuffed rose to the level of an intervening circumstance as set out by *Ingram* and other controlling precedent. In resistive behavior—with his hands in cuffs behind his back—Howard sought to reach the fanny pack on his chest. Certainly, Howard was not fleeing officers, after pushing them aside, as in *Ingram*. And this behavior is a far cry from the assaultive acts towards officers which Minnesota courts have concluded constitutes an otherwise “intervening circumstance.” See, e.g., *State v. Kittleson*, 305 N.W.2d 787, 789 (Minn. 1981) (appellant pointed a gun at an officer who had entered the room to investigate a call on an assault with a dangerous weapon); *State v. Bale*, 267 N.W.2d 730, 731 (Minn. 1978) (appellant pointed a pistol at the arresting officer before engaging in a “scuffle” with the officer); *State v. Combs*, 392 N.W.2d 567, 569 (Minn. App. 1986), *rev’d in part on other grounds*, 398 N.W.2d 563 (Minn. 1987) (arresting officer’s arm became trapped in a car window when appellant rolled up the

window and attempted to flee). Nor is *State v. Olson*, as the state suggests, to the contrary. 634 N.W.2d 224 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001). There, the defendant’s “twisting and turning,” which resulted in a subsequent charge of obstruction of legal process, “went beyond an ordinary, predictable” response to an illegal stop. *Id.* at 230. We observe that in *Olson*, appellant did not dispute that his actions established probable cause to arrest him for obstruction of legal process, whereas here, Howard was never charged with a crime such as resisting arrest (or obstruction of legal process) based upon his behavior towards police. And while we are mindful that a lack of such charges is not dispositive,⁵ the state did not even argue to the district court that Howard’s actions rose to the level of a criminal offense.⁶

Further, these “resistive behaviors” right after being handcuffed, must be examined in light of Howard’s overall reactions during the stop. As the district court found, Howard was cooperative and quick to comply with the officers’ commands throughout the stop. When the interaction first began, Howard “quickly complied” when told not to reach for

⁵ *Ingram*, 570 N.W.2d at 179 (stating that under the specific facts in Ingram’s case, it was “immaterial whether Ingram was charged with assault of a police officer, resisting arrest, or obstructing legal process”).

⁶ On appeal, the state now argues that Howard’s actions amounted to obstruction of legal process. While the state can raise alternative arguments on appeal in defense of an underlying decision when there are sufficient facts in the record for the appellate court to consider the alternative theories, *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003), given the lack of factual development before the district court, the facts to support this argument are sorely lacking. For reasons similar to the ones which lead us to conclude that Howard’s behavior did not clearly rise to the level of an intervening circumstance, we do not view the facts before us as establishing obstruction of legal process. His resistive behaviors (particularly given that his hands were cuffed behind his back during this short period of time) did not have the effect of substantially frustrating or hindering officers in the performance of their duties. Minn. Stat. § 609.50, subd. 1(a)-(b) (2018).

his fanny pack and “immediately paused and stopped attempting to access the contents of his fanny pack.” When the officers then moved to detain Howard, he “allowed officers to almost immediately guide his hands behind his back to be handcuffed without incident.” There were no guns pointed at officers. No fights. No attempts to flee. In sum, when placed on the spectrum of behavior (evidence of a subsequent crime at one end and “predictable response” to an illegal seizure on the other) Howard’s behaviors were more akin to a predictable response to an illegal seizure rather than a new criminal act.

In concluding otherwise—that Howard’s behavior clearly created an intervening circumstance—the district court applied the standard established in *Terry*, which assesses whether an officer can search an individual for weapons during a stop. 392 U.S. at 24-27, 88 S. Ct. at 1881-83. And if after a *legal stop*, Howard then engaged in these “erratic, resistive behaviors,” *Terry* could well provide authority for the officers to frisk Howard for weapons. *State v. Payne*, 406 N.W.2d 511, 513 (Minn. 1987) (“An officer may conduct a limited protective weapons frisk of a *lawfully* stopped person.” (emphasis added)).⁷ But that is not the case before us.⁸ To analyze whether the state proved an intervening

⁷ We observe that even if *Terry* provided a rationale for a frisk for weapons, the search of the fanny pack took place (according to the district court’s factual findings) after it was removed from Howard’s chest. This distinction, however, was not raised by counsel and we decline to address it here.

⁸ We reiterate that while the initial traffic stop was justified, the handcuffing of Howard was an illegal expansion of that stop, unjustified by reasonable suspicion of additional circumstances. The state cites no precedent for the proposition that the authority of *Terry* for a “frisk” extends to a situation following an unlawful expanded search. Nor have we found that authority in Minnesota law.

circumstance which removed the taint of illegal police conduct by reference to the *Terry* standard was error.

Applying the correct legal standard set forth in our precedent, and based on the district court's factual findings, we conclude that Howard's actions were not sufficient intervening circumstances to purge the taint of the officers' impermissible expansion of the stop. At most, Howard's actions, given the circumstances as a whole, render the fourth "intervening circumstances" factor neutral. These actions certainly do not "tip the scales heavily" toward suppression as the district court concluded. And we do not consider this factor in a vacuum. When we weigh—as we must—the intervening circumstances factor with the first three factors, all of which favor suppression, the gun should have been excluded from evidence. Again, the purpose of the exclusionary rule is to deter police misconduct. Deterrence is called for here.

In sum, our de novo review regarding whether the search of the fanny pack was purged of the undisputed illegal police misconduct—balancing all four relevant factors—leads us to conclude the district court erred in denying Howard's motion to suppress evidence of the gun as fruit of the illegal expanded stop.

Reversed.