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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0573**

State of Minnesota,
Respondent,

vs.

Pao Choua Yang,
Appellant.

**Filed March 6, 2023
Affirmed
Bjorkman, Judge**

Pine County District Court
File No. 58-CR-19-718

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

Reese Frederickson, Pine County Attorney, Michelle R. Skubitz, Chief Deputy County Attorney, Pine City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction for first-degree drug possession, arguing that (1) the methamphetamine discovered during a search incident to his arrest should have

been suppressed because the officers did not have a reasonable, articulable suspicion that he was involved in a crime, and (2) the district court abused its discretion by allowing the officers to testify about the circumstances that led to their encounter with appellant. We affirm.

FACTS

On the afternoon of January 20, 2019, R.S. contacted law enforcement to report her vehicle stolen. She told a Mille Lacs Tribal Police Officer (officer) that she loaned the vehicle to her mother, who planned to drive appellant Pao Yang to the Twin Cities. R.S. further explained that her mother and Yang got into an argument at a gas station in Forest Lake, and when her mother went inside the station, Yang drove away in the vehicle without her. The officer contacted the Forest Lake Police Department, which marked the vehicle stolen.

A little more than one hour later, R.S. called the officer to advise that Yang had contacted R.S.'s sister about dropping the vehicle off at Walmart in Pine City, and that R.S.'s friend saw the vehicle at Grand Casino in Hinckley. The vehicle was not found in either location. But the officer informed casino security that he was looking for Yang and asked them to contact him if they saw Yang at the casino. Later that evening, R.S. informed the officer that her vehicle was at McDonald's in Hinckley. The officer found the vehicle there, but not the keys. Shortly thereafter, R.S. told the officer that Yang had given the keys to a mutual friend, and that she intended to pick up the vehicle the next day. Just before 9:00 p.m., the officer informed Forest Lake police that the vehicle had been recovered.

Early the next morning, casino security notified the officer that Yang was on the gaming floor. The officer went to the casino with a Pine County Sheriff's Deputy to speak with Yang about the vehicle incident. The two met Yang on the gaming floor and asked him for identifying information. During this interaction, Yang attempted to walk away multiple times and the officer informed Yang that he was not allowed to do so because he was being detained. When the officers relayed Yang's identifying information to the Pine County Sheriff's Office, they learned that Yang had active arrest warrants. The deputy arrested Yang on the warrants.

While searching Yang incident to the arrest, the deputy found a bag of "crystallized substance" in Yang's jacket pocket. Yang said that the substance was "bath salts" but immediately corrected himself to say it was "sidewalk salt." Subsequent testing by the Minnesota Bureau of Criminal Apprehension revealed the substance was methamphetamine.

Yang was charged with first-degree possession of a controlled substance. He moved to suppress the 94 grams of methamphetamine found on his person as the fruit of an unreasonable seizure. The district court denied the motion, reasoning that the officers "had a reasonable, articulable, and objective basis for suspecting" Yang had stolen a vehicle. And the court determined there was nothing unreasonable about the officers "confirming [Yang's] identity" or arresting him on the warrants.

Prior to trial, Yang moved to exclude testimony that the officers were looking for him because he was a suspect in a stolen-vehicle investigation and that they arrested him on outstanding warrants. The prosecutor explained that this limited testimony provided

relevant context as to why the officers approached and arrested Yang and would not be offered to prove that Yang stole a vehicle or violated probation (the reason for the arrest warrants). The district court denied Yang's motion but told his attorney that "[i]f the questioning or testimony goes beyond" the limited evidence the state planned to introduce, "I certainly expect that you will raise an objection and we can address it at that time."

At trial, the officer testified on direct examination that he was involved in a stolen-vehicle investigation, Yang was identified as a suspect, the vehicle was recovered, and at the time he encountered Yang he still wanted to speak with him about the situation. He further testified that he encountered Yang at Grand Casino Hinckley and when he learned of the outstanding warrants, Yang was arrested and searched. The deputy testified to the same effect. Yang did not object. Rather, on cross-examination, Yang's counsel asked the officer additional questions about the stolen-vehicle investigation. And Yang testified at length about the events that led to the stolen-vehicle report, his interaction with the officers at the casino, and his arrest warrants.

The jury found Yang guilty as charged, and the district court imposed a 95-month prison sentence. Yang appeals.

DECISION

I. Yang's seizure was supported by reasonable, articulable suspicion of criminal activity.

The Fourth Amendment of the United States Constitution and article 1, section 10 of the Minnesota Constitution prohibit unreasonable searches and seizures. A seizure occurs when "in view of all the circumstances surrounding the incident, a reasonable

person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter.” *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995) (citing *Florida v. Royer*, 460 U.S. 491, 497-98 (1983), and *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). Warrantless seizures are per se unreasonable, unless a recognized warrant exception applies. *Coolidge v. New Hampshire*, 403 U.S. 443, 474 (1971); *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). The state has the burden to show that an exception to the warrant requirement applies. *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003).

One recognized exception to the warrant requirement is that a law-enforcement officer may temporarily seize an individual to investigate if the officer has a reasonable and articulable suspicion that the individual is engaged in criminal activity. *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021). This includes situations in which the officer reasonably suspects that the individual engaged in past criminal conduct. *See United States v. Cortez*, 449 U.S. 411, 417 n.2 (1981) (“Of course, an officer may stop and question a person if there are reasonable grounds to believe that person is wanted for past criminal conduct.”).

The existence of reasonable suspicion is based on the totality of the circumstances, including “the officer’s general knowledge and experience, the officer’s personal observations, information the officer has received from other sources, the nature of the offense suspected, the time, the location, and anything else that is relevant.” *Applegate v. Comm’r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987). The showing required to establish reasonable suspicion is low. *Taylor*, 965 N.W.2d at 758. We review de novo

whether a seizure is supported by reasonable, articulable suspicion of criminal activity. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999).

Yang argues that the officers did not have reasonable suspicion to seize him at the casino because the stolen-vehicle investigation was based on second-hand information. He points out that the vehicle-theft alert had been canceled and contends that Yang's act of returning the vehicle so quickly dispelled any suspicion that he intended to steal it. And he further asserts that his seizure was constitutionally unreasonable because (1) it did not serve the public interest, (2) the officers could have questioned him later at his home or another location, and (3) the purported theft occurred in a county that was outside the jurisdiction of both officers. None of these arguments persuade us to reverse.

First, the fact the officers did not speak directly to R.S.'s mother does not preclude a determination that they reasonably suspected that Yang stole the vehicle. Reasonable suspicion requires "considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause." *Taylor*, 965 N.W.2d at 752. And while the officers' testimony about the stolen-vehicle investigation was limited, the record shows that they received information that Yang was involved in a crime: The owner of the vehicle reported it stolen, identified Yang as the person who stole it, and kept the police informed of Yang's actions while he had the vehicle in his possession. These circumstances easily clear the low threshold of reasonable suspicion that Yang had committed a crime, permitting the officers to stop and question him. *See Cortez*, 449 U.S. at 417 n.2.

Second, the suggestion that Yang's act of returning the vehicle dispelled reasonable suspicion is unavailing. A person commits motor-vehicle theft when they "drive[] a motor vehicle without the consent of the owner or an authorized agent of the owner, knowing or having reason to know that the owner or an authorized agent of the owner did not give consent." Minn. Stat. § 609.52, subd. 2(a)(17) (2018). Nothing in the statute exonerates a person who later returns the vehicle or abandons it. Because Yang cites no authority for his remaining arguments, we do not consider them. *See State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." (quotation omitted)).

An officer may seize a person reasonably suspected of past criminal activity. Because Yang does not challenge the officers' actions in arresting him on the outstanding warrants, we discern no error by the district court in denying Yang's suppression motion.

II. The district court did not abuse its discretion by allowing limited testimony about the stolen-vehicle investigation and Yang's arrest warrants.

"Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). Relevant evidence is that "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. But even relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Minn. R. Evid. 403. And while "[e]vidence of another

crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith,” Minn. R. Evid. 404(b)(1), it may be admitted to provide the context for a police encounter or investigation, *Ali*, 855 N.W.2d at 249 (citing *State v. Griller*, 583 N.W.2d 736, 743 (Minn. 1998)).

Yang asserts that the district court abused its discretion because the officers’ testimony that he was a suspect in a stolen-vehicle investigation and that he had active arrest warrants was irrelevant to the drug charge, highly prejudicial, and violated rule 404(b)’s prohibition against prior crime and bad-act evidence. We are not persuaded.

In *Griller*, our supreme court held that the district court did not abuse its discretion by admitting testimony about a letter sent to the police or the content of police interviews with neighbors, both of which triggered the investigation of Griller and the excavation of his backyard that led to the discovery of two bodies. 583 N.W.2d at 743. The supreme court reasoned that the testimony “provided the jury with the context necessary to explain how the investigation against Griller began and why the police were excavating [Griller’s] backyard.” *Id.* *Griller* controls our analysis in this case.

Yang’s reliance on *State v. Litzau*, 650 N.W.2d 177 (Minn. 2002), does not convince us otherwise. Litzau was charged with first-degree possession of a controlled substance. 650 N.W.2d at 180. At trial, an officer testified “that the police had received a tip from a ‘reliable source’ who said that [Litzau] . . . ‘was carrying—transporting drugs’” in his vehicle. *Id.* at 183. The supreme court agreed with Litzau that testimony to this effect was inadmissible hearsay because “[t]here was no reason for the officers’ testimony about the substance of the informant’s conversation which pointed directly to [Litzau’s] guilt of the

crime for which he was on trial.” *Id.* Here, by contrast, the officers’ testimony was limited to stating that they approached Yang because he was suspected of stealing a vehicle—not the offense for which Yang was on trial—and that they arrested him because he had outstanding warrants. The challenged testimony had no bearing on Yang’s guilt of the crime for which he was on trial. As in *Griller*, it merely established the reason why the officers approached Yang at the casino and why they arrested him.¹

In sum, Yang’s seizure was supported by reasonable, articulable suspicion of criminal activity. And the district court did not abuse its discretion by permitting brief testimony from the arresting officers regarding the context of the seizure.

Affirmed.

¹ Yang also states that the district court “appeared to invoke the ‘immediate episode’ doctrine of admissibility.” This doctrine allows admission of evidence of other offenses only where the other offenses and the charged offense are “linked together in point of time or circumstances so that one cannot be fully shown without proving the other.” *State v. Fardan*, 773 N.W.2d 303, 316 (Minn. 2009) (quotation omitted). The record defeats Yang’s argument. The district court made no mention of the doctrine, and expressly stated that it admitted the testimony as “appropriate context” for the investigative seizure.