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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0843**

State of Minnesota,
Respondent,

vs.

Devonte Rayon Smith,
Appellant.

**Filed July 21, 2025
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CR-22-18410

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

Mary F. Moriarty, Hennepin County Attorney, N. Nate Summers, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Law-enforcement officers stopped and detained Devonte Smith and his brother outside their car, having mistakenly believed Smith to be a fugitive. After discovering the mistake but before releasing Smith, one of the officers obliged Smith's request to enter the

car to retrieve Smith's phone but instead found a handgun and fentanyl pills packaged for sale. In this appeal from Smith's conviction for illegally possessing the drugs and the firearm, Smith argues that the district court erroneously refused to suppress the evidence obtained during an unconstitutional detention. Although the officers violated Smith's constitutional right to be free of unreasonable seizures when they failed to immediately release him once they realized they had mistaken him as a fugitive, the district court was not bound to suppress the evidence obtained during the detention because the officers could lawfully prohibit Smith from re-entering the car and because the intervening circumstance of Smith's request sufficiently attenuated the seized evidence from the taint of the unconstitutional detention. We therefore affirm.

FACTS

In September 2022 Brian Eells was working as a special deputy U.S. marshal on a task force to apprehend dangerous fugitives. Special Deputy Eells and his team were looking for a fugitive who had an arrest warrant for an assault with a handgun. The fugitive was a black man in his mid-20s, about 5'4" and 140 pounds, and whose hair was styled in short dreadlocks.

Special Deputy Eells and other agents were surveilling an apartment building in St. Paul where they thought the fugitive might be located. They saw two black men leave the building and enter a car. Special Deputy Eells believed that the man in the passenger seat could be the fugitive, and he informed the other task force agents. They tracked the car to a Minneapolis car wash and watched. An agent surveilling with binoculars determined that

the driver was likely the fugitive. An agent in plain clothes walked beside the two suspects, leaving him “certain” that one of the two was the fugitive.

The agents waited until the two men drove away and stopped behind a liquor store on Lake Street, where agents descended on them with guns drawn and handcuffed them. The man who had been the passenger in the car was identified, and he then identified the driver as his brother, Devonte Smith. Agents learned that the passenger was a felon with an outstanding warrant for his arrest. One agent searched him and found that he was carrying a handgun with an extended magazine in his waistband. Another agent opened the car’s trunk and a rear door. The agent had noticed that Smith was no longer wearing a cross-body bag agents had seen him wearing earlier, and the agent found the bag on the back seat. He felt the bag for about five seconds and he tossed it back into the car. Agents pondered aloud whether Smith was the fugitive they were looking for, and one of them announced that he had found “dope” on the back seat.

Agents frisked Smith and found his Minnesota driver’s license. Agents asked Smith for his name, and he told them, “Devonte.” Special Deputy Eells, who had not been with the rest of the team when they first confronted Smith and his brother, arrived about “a minute or two” after the encounter began. He immediately recognized that Smith was not the fugitive they had been seeking. But he did not immediately release Smith. An agent told him they would first “run” him, checking his status on a law-enforcement database. Special Deputy Eells told agents to remove Smith’s handcuffs and told him, “[A]s soon as we figure out what’s going on with [your brother] you’re going to be free to go.”

Special Deputy Eells waited for the Minneapolis Gun Unit to arrive and process the scene, including the car, because of Smith's brother's gun. Smith, waiting to be released, asked Special Deputy Eells to retrieve his cellphone for him from the car's center console, authorizing Eells to enter the car to do so. Special Deputy Eells then opened the driver's side door. He saw a handgun with an extended magazine on the car's floor in front of the driver's seat. He then searched the car and he found the bag Smith had been wearing earlier. Inside the bag he found fentanyl pills. The car search also revealed other contraband, including suspected narcotics.

The state charged Smith with two felonies—illegal drug possession of 50 or more doses and unlawful possession of a firearm. Smith moved the district court to suppress the evidence obtained during his detention. The district court conducted a contested hearing and concluded that the stop had been valid because the agents reasonably suspected that Smith was the fugitive they had been seeking. It also held that Smith was “released from custody” before he asked Special Deputy Eells to retrieve his phone and consented to his entry into the car. Because Smith's gun was in plain view upon entry, the court reasoned, its seizure was not unconstitutional. The district court concluded further that the circumstances then gave the agents probable cause to lawfully search the rest of the car.

Relying on the allegedly unconstitutionally seized evidence, a jury found Smith guilty as charged, and the district court sentenced him to 45 months in prison for his drug-possession conviction and 60 months, concurrently, for his firearm conviction.

Smith appeals.

DECISION

Smith argues that the district court erroneously refused to suppress the seized evidence. We review the district court's findings of fact for clear error and its legal conclusions *de novo* on appeal from a denial of a motion to suppress evidence. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). For the reasons that follow, we hold that the district court properly denied Smith's motion to suppress.

Constitutionality of Smith's Seizure

Smith argues that the agents unlawfully seized him. The federal and state constitutions prohibit unreasonable seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer may briefly detain an individual for investigation if the officer has reasonable suspicion that the person detained is involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). Police who are constitutionally justified to detain a suspect but who mistakenly detain a different person do not violate the detained person's Fourth Amendment rights if the mistaken identity was objectively reasonable and consistent with the purpose of the detention. *See State v. Poehler*, 935 N.W.2d 729, 733 (Minn. 2019); *see also State v. Frazier*, 318 N.W.2d 42, 43 (Minn. 1982) ("Whether the arrest was legal depends on whether the record sufficiently establishes that the deputies reasonably believed that defendant was [the suspect]."). Before applying that standard here, we first consider whether the issue is properly before us.

Smith may have forfeited the question of the constitutionality of his initial detention by failing to raise it in the district court. We generally do not address issues raised for the

first time on appeal, including constitutional questions of criminal procedure. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Smith arguably did not contest the validity of his initial detention when he moved to suppress evidence. He opened the evidentiary hearing by conceding that his “seizure was not at the inception illegal.” He instead based his motion on his assertion that the agents “realized very quickly that he was not the fugitive and he was not allowed to leave.” Smith’s argument on appeal differs materially from these apparent concessions in the district court. His posthearing brief, however, suggests loosely that he was also contesting the stop. His challenge to the initial seizure is potentially forfeited on appeal.

We choose to base our decision instead on the merits of Smith’s argument, which fails. The district court found that the agents reasonably believed that Smith was the fugitive because he exited the apartment building where the fugitive lived and appeared to the agents to look like the fugitive. The hearing testimony supports the district court’s reasonableness determination. Special Deputy Eells testified to seeing Smith and his brother leave the building associated with the fugitive and to believing that one of them matched the fugitive’s description. Eells also testified that two other agents believed that either Smith or his brother was the fugitive. One agent, after viewing the brothers with binoculars, believed Smith was the fugitive, and the other, who walked beside the brothers, was “certain” that one was the fugitive. Body-camera footage corroborated the reasonableness of the agents’ belief, as Smith appears to be a mid-20s black male with short dreadlocks, like the fugitive.

Smith counters by asserting that the fugitive police sought was shorter and lighter than him and his brother. But the district court received no testimony during the evidentiary hearing indicating the brothers' heights and weights, and their size cannot be clearly determined from the body-camera evidence alone. And the district court's pretrial evidence-admissibility decision rests only on the record evidence admitted during the hearing. *See State ex rel. Rasmussen v. Tahash*, 141 N.W.2d 3, 13 (Minn. 1965). The reasonable-suspicion determination that the district court made, based on the evidence presented at the hearing, depends on the totality of the circumstances. *See United States v. Cortez*, 449 U.S. 411, 417 (1981). And in this case, the agents' identification of Smith or his brother as the fugitive based on their race, gender, approximate age, facial features, hairstyle, and location in the apartment building associated with the fugitive constitutes reasonable suspicion based on all the circumstances.

We are not compelled to a different outcome by Smith's analogy to caselaw addressing mistaken identity. Smith relies on *Frazier*, where the supreme court affirmed suppression of evidence obtained after an arrest based on an unreasonable mistake of identity. 318 N.W.2d at 44. But unlike the circumstances here, the circumstances in *Frazier* involved deputies who "hastily" concluded, after viewing the defendant at a distance of 500 feet, that she was the suspect, an initial identification that did not occur at a place reliably known to be associated with the suspect, and an arrestee who was "nearly twice as old" as the suspect and who had "two very prominent scars on her face." *Id.* at 43–44. This case does not resemble *Frazier*, but it does resemble *State v. Sanders*, 339 N.W.2d 557 (Minn. 1983), where the court recognized that the mistake was reasonable:

We conclude that the record supports the trial court's conclusion that the state met its burden of proving that Officer Nelson and the officers reasonably suspected that defendant was Mr. French. Defendant, like French, is a short black man. It is true that he was 52 at the time, whereas French was only 30; arguably, however, French looked older than 30 in his picture. Further, defendant has a facial structure that is quite similar to that of French. It is also significant that Nelson reasonably believed that French had a prominent grey streak in his hair. Nelson also was justified in thinking that French might well be driving the Cadillac

Sanders, 339 N.W.2d at 560. Similar to the circumstances in *Sanders*, several of Smith's and his brother's physical characteristics matched the suspect's. Following *Sanders*'s lead, we hold that the agents did not violate Smith's Fourth Amendment rights by initially stopping and detaining him.

Smith argues next that the agents' reasonable, articulable suspicion ended, and their constitutional authority to detain him with it, as soon as they learned he was not the fugitive they were seeking. Smith is correct. Continued detentions after an officer's reasonable suspicion has been dispelled are unconstitutional. *See State v. Hickman*, 491 N.W.2d 673, 675 (Minn. App. 1992), *rev. denied* (Minn. Dec. 15, 1992). We recognize that Special Deputy Eells testified that he gets "told wrong names all the time" and that the agents' reasonable suspicion to detain Smith was not immediately dispelled simply on hearing Smith's name. But we hold that the agents' suspicion was no longer reasonable once Special Deputy Eells recognized that Smith was not the fugitive.

Because the agents had no reasonable suspicion to justify Smith's seizure at that point, his continued seizure violated his Fourth Amendment rights. The district court determined that Smith was "released from custody" shortly after the special deputy realized

that Smith was not the fugitive and Smith's handcuffs were removed. We read the record differently. Special Deputy Eells testified that he told Smith that he was "going to be free to go," with the understanding that Smith was not yet free to go, even after learning he was not the fugitive. A person is seized for Fourth Amendment purposes if a reasonable person under the circumstances would feel as though he is not free to leave. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). No reasonable person would feel free to leave when an armed agent flanked by other armed agents tells him that he may not. We conclude instead that Smith's detention continued unconstitutionally even after his handcuffs were removed.

Application of the Exclusionary Rule

Smith argues that the district court was required to suppress the drug and gun evidence uncovered during his unconstitutional seizure. Evidence obtained because of an illegal seizure generally should be excluded. *See State v. Cripps*, 533 N.W.2d 388, 392 (Minn. 1995). But when an intervening event such as the defendant's independent act of free will breaks the causal chain between unlawful police conduct and the discovery of inculpatory evidence, the exclusionary rule does not apply and the evidence should not be excluded. *See Utah v. Strieff*, 579 U.S. 232, 238–39 (2016). We examine whether Smith's voluntary request for his phone and consent for the special deputy to enter his car is such an intervening event.

We first determine whether Smith's consent was truly voluntary. For consent to mitigate unconstitutional police activity, the state must establish both that the consent was voluntary and that the connection between the unlawful conduct and the evidence

discovered was sufficiently attenuated. *State v. Barajas*, 817 N.W.2d 204, 217–18 (Minn. App. 2012), *rev. denied* (Minn. Oct. 16, 2012). Whether consent is voluntary is a question of fact that we review for clear error, *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011), and here the district court found that Smith “freely and voluntarily consented to the officers entering his car and retrieving his phone.” The record supports the finding. Special Deputy Eells testified that Smith asked him to retrieve his phone and gave him express permission to enter the car to do so. The district court’s finding that Smith’s consent was voluntary stands.

We next determine whether a sufficient intervening event broke the causal chain between Smith’s unconstitutional seizure and the agents’ discovering the evidence. *See Strieff*, 579 U.S. at 238–39. The Supreme Court has articulated three factors that guide this analysis: first, the temporal proximity between the unconstitutional conduct and evidence discovery; second, the presence of intervening circumstances; and third, of particular significance, the purpose and flagrancy of the misconduct. *Id.* at 239. We consider these factors here.

The first factor, the temporal proximity between Smith’s illegal detention and the agents’ discovering the gun and drugs inside the car, favors suppressing the evidence. While the record does not reveal a precise timeline, it suggests that Special Deputy Eells discovered the evidence very soon after Smith’s seizure became unconstitutional. “[S]ubstantial time” had not elapsed. *Id.* Although this factor favors suppression, it alone is not dispositive, *see id.* at 242, and we turn to the others.

The second factor, the presence of intervening circumstances, weighs strongly against suppressing the discovered evidence. The unconstitutional part of the engagement did not lead to Smith’s voluntary consent for Special Deputy Eells to enter his car; rather, Smith’s express request for the retrieval of his phone led to his consent and the evidence discovery. *See United States v. Montgomery*, 777 F.3d 269, 275 (5th Cir. 2015) (characterizing a voluntary, unprompted request as a “unique intervening circumstance” that “separates this particular act of consent from the doubtless more frequent occurrence: consent provided *after* an officer’s request to conduct a search.”). Smith had been lawfully separated from his phone by the initial seizure, and although the detention later became unlawful, the agents could lawfully prohibit him from re-entering the car while detaining his brother and waiting for Minneapolis police to process the car after discovering the brother’s illegally possessed gun. *Cf. State v. Gilchrist*, 299 N.W.2d 913, 916 (Minn. 1980) (citing *Pennsylvania v. Mimms*, 434 U.S. 106 (1977)) (recognizing the propriety of an officer ordering occupants from a vehicle for his safety). Smith therefore asked for his phone not “only because” of his illegal seizure, as he asserts, but because he was not lawfully permitted to re-enter the car. It is true that consent alone might not validate unconstitutional police activity. *See, e.g., Barajas*, 817 N.W.2d at 218–19; *State v. Chute*, 887 N.W.2d 834, 843–44 (Minn. App. 2016), *aff’d*, 908 N.W.2d 578 (Minn. 2018). But Smith’s lawful initial detention and the lawful ongoing separation from his phone meant that he needed to ask agents to retrieve it, a volitional and independent act that broke the causal connection between his unlawful detention and the evidence discovered when he consented to the entry.

The third factor—the purpose and flagrancy of the agents’ misconduct—weighs slightly against evidence suppression. The exclusionary rule seeks to deter police misconduct and therefore favors exclusion only when police misconduct is purposeful or flagrant. *Strieff*, 579 U.S. at 241; *see also United States v. LeBeau*, 867 F.3d 960, 973 (8th Cir. 2017) (“In evaluating this factor, courts consider whether the violation was investigatory in design and purpose, and whether the officers used force, threats, or intimidation.” (quotation omitted)). Although agents continued to seize Smith after learning he was not a fugitive, the illegality was not “flagrant” because Special Deputy Eells articulated a plausible, although not constitutionally sufficient, reason for the continued detention: he sought to verify Smith’s brother’s identity before letting Smith leave, and Smith had been in the car with him. We think the brief, continued detention was not flagrant under these circumstances.

Smith argues that the agents did not allow him to leave because they hoped to eventually search his car, evidenced by an agent inexplicably announcing that there was “dope” in the cross-body bag. Smith lists other allegedly improper activities: agents rifled through Smith’s pockets during his initial detention; they asked him the location of the cross-body bag; and they looked inside the bag before they had Smith’s consent to enter the car. But the district court found that agents did not open the cross-body bag, a finding supported by body-camera footage. And even accepting that the alleged additional conduct occurred and was improper, the third factor still does not tip in Smith’s favor. None of this activity led to the evidence ultimately discovered or caused Smith to ask for his phone. On balance, we hold that the taint of Smith’s unconstitutional seizure was sufficiently

attenuated from the agents' discovering the drugs and gun. The district court properly denied Smith's motion to suppress the evidence.

The state has also argued that the agents' recovering Smith's brother's handgun gave police probable cause necessary to search Smith's car, which would have led to law enforcement discovering the handgun and narcotics regardless of Smith's cellphone request. *See State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007) (recognizing that probable cause can support a vehicle search under the vehicle exception to the warrant requirement). Because of our holding that Smith's free-will act of asking the special deputy to enter his car and retrieve his phone constitutes an intervening event that broke the causal chain between the unlawfully continued detention and the agents' discovery of evidence, we need not consider whether the evidence was also admissible under any different theory.

Affirmed.