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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1125**

State of Minnesota,
Respondent,

vs.

Robert Michael Martin,
Appellant.

**Filed March 29, 2011
Affirmed
Schellhas, Judge**

Ramsey County District Court
File No. 62-CR-09-17659

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney,
Andrew W. Johnson (certified student attorney), St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Shumaker, Presiding Judge; Hudson, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his conviction of possession of a firearm by an ineligible person arguing that the district court erred by denying his motion to suppress evidence. We affirm.

FACTS

This case arises out of the arrest of appellant Robert Martin on the evening of December 5, 2009, in a high-crime area near the intersection of Payne and Case Avenues in St. Paul. While on patrol the previous night, St. Paul Police Officer Christopher McGuire and his partner saw Trinity Sellers, a known drug user who associates with other drug users and criminals, waive down a car, which pulled into a nearby alley. Sellers approached the vehicle, made contact, walked out of the alley out of sight of the officers, returned to the vehicle, and handed the driver something. Believing that they had observed an illegal drug transaction, the officers stopped the vehicle and, after finding methamphetamine wrapped in a dollar bill, arrested the driver for drug possession. But the officers did not arrest Sellers because they could not locate her.

Officer McGuire testified that there have been numerous homicides, gang-related activities, and narcotics activities in the area. He also testified that the traffic in the area dies off after 10:00 p.m., especially in the winter, and that the nearby businesses are closed at that time of night.

On December 5, at 10:51 p.m., Officer McGuire and his partner were patrolling in the same area as the previous night when they saw Sellers near the same alleyway.

Sellers and two other individuals were pacing back and forth on the sidewalk. Although a bus stop is located at the corner of Payne and Case, the three individuals were not at the bus stop. McGuire could not tell if the individuals were talking, but they were walking together as a group. Besides Sellers, the officers recognized Thomas Hayes, a known narcotics user, who was carrying a backpack. Prior to December 5, a confidential informant had informed the officers that Hayes possessed a handgun and carried it in his backpack. The officers later identified the third individual as Martin.

The officers requested that the three individuals come to their squad car to speak with them. The individuals complied and the officers asked them to place their hands on the hood of the squad car. The individuals complied. Officer McGuire asked Martin his name and whether he possessed anything illegal. Martin mumbled the word “gun” and pointed to his waistband. Concerned that Martin was reaching for a gun, McGuire took him to the ground. In the process, McGuire noticed a black object and one or two plastic baggies of suspected methamphetamine “fly out of” Martin’s coat pockets. McGuire recovered a black BB gun from Martin’s waistline. McGuire later recovered suspected methamphetamine wrapped in a dollar bill from Martin’s front pocket and identified the black object as a butterfly knife.

Respondent State of Minnesota charged Martin with possession of a firearm by an ineligible person in violation of Minn. Stat. § 609.165, subd. 1b(a) (2008). Martin argued that the stop was illegal and moved the district court to suppress the evidence. The court denied Martin’s motion. Martin waived his right to a jury trial, and the parties submitted the case to the court on stipulated facts to preserve evidentiary issues for appeal in

accordance with Minn. R. Crim. P. 26.01, subd. 3, and *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). The district court convicted Martin of possession of a firearm by an ineligible person. This appeal follows.

DECISION

Arguing that the officers lacked reasonable articulable suspicion to justify stopping him, Martin maintains that the district court erred by not suppressing the evidence obtained as a result of the stop. “When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review de novo whether a search or seizure is justified by reasonable suspicion or probable cause. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *see also Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691 (1961) (applying the Fourth Amendment to the states by way of the Fourteenth Amendment’s due-process clause). “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). “Generally, evidence seized in violation of the constitution must be suppressed.” *State v. Jackson*, 742 N.W.2d 163, 177–78 (Minn. 2007).

Officers may constitutionally conduct limited stops to investigate suspected criminal activity if the officers can “point to specific and articulable facts which, taken

together with rational inferences from those facts, reasonably warrant that intrusion.” *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)) (quotation marks omitted). Whether the police have reasonable suspicion to conduct an investigative stop is determined based on the totality of the circumstances. *Id.*

The supreme court has recognized that “the reasonable suspicion standard is not high.” *Timberlake*, 744 N.W.2d at 393 (quotations omitted). To justify a stop, officers “must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity.” *Id.* (quotations omitted). Officers must “articulate a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Id.* (quotation omitted). A stop is justified “when an officer observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot.” *Id.* (quotation omitted).

In this case, the state concedes that the officers seized Martin when they ordered him to place his hands on the squad car. The issue we must resolve is whether Officer McGuire articulated a particularized and objective basis for suspecting Martin of criminal activity.

Martin was in a high-crime area and was walking back and forth with two known narcotics users, Sellers and Hayes. But “merely being in a high-crime area will not justify a stop.” *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992). And “merely speaking with and being in close proximity with others suspected of criminal activity, without more, may be insufficient . . . to reach the threshold of reasonable articulable

suspicion.” *State v. Ingram*, 570 N.W.2d 173, 177 (Minn. App. 1997), *review denied* (Minn. Dec. 22, 1997).

Here, Martin and the other two known individuals were walking back and forth on the sidewalk in front of an alley late at night with no apparent purpose. They were not at the nearby bus stop, and businesses in the area were closed. The previous evening, Officer McGuire observed Sellers engage in a drug transaction at the same location and subsequently arrested the purchaser for possessing methamphetamine. On December 5, the officers reasonably believed that Hayes possessed a gun in his backpack.

Martin argues that Officer McGuire failed to articulate the suspected illegal conduct when he testified that the behavior of the three individuals was suspicious. A police officer is not required to identify the ultimate illegality stemming from the observed conduct. *Yoraway v. Comm’r of Pub. Safety*, 669 N.W.2d 622, 627 (Minn. App. 2003). Rather, an officer need only describe some objectively observable conduct that reasonably arouses suspicion that there might be illegal behavior afoot. *Id.* The officers satisfied that requirement here.

We conclude that the district court did not err when it determined that “the officers had specific articulable facts and had knowledge of circumstances that created reasonable suspicion of criminal activity which allowed the officers to initiate a stop of the individuals without violating their Constitutional rights.” The totality of the circumstances justified the stop of the three individuals, including Martin. Therefore, the court did not err by denying Martin’s motion to suppress the evidence.

Affirmed.