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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0230**

State of Minnesota,  
Respondent,

vs.

Lewis Lee Harris,  
Appellant.

**Filed January 28, 2013  
Affirmed  
Kalitowski, Judge**

Hennepin County District Court  
File No. 27-CR-11-17678

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Bridget Kearns Sabo, Assistant Public Defender, St. Paul, Minnesota; and

Kristin Berger Parker, Special Assistant Public Defender, Leonard, Street and Deinard, Minneapolis, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and  
Larkin, Judge.

## UNPUBLISHED OPINION

**KALITOWSKI**, Judge

Appellant Lewis Lee Harris challenges his conviction of second-degree possession of a controlled substance in violation of Minn. Stat. § 152.022, subds. 2(1), 3(b) (2010), arguing that (1) the district court erred by concluding that the search and seizure was lawful under the *Terry* and plain-feel exceptions to the warrant requirement and (2) the search and seizure cannot be justified as a search incident to arrest. We affirm.

### DECISION

“When reviewing a district court’s pretrial order on a motion to suppress evidence, we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation and citation omitted).

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. “Warrantless searches are generally unreasonable unless they fall within a recognized warrant exception.” *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). If a search and seizure is unreasonable, any resulting evidence must be suppressed. *State v. Harris*, 590 N.W.2d 90, 97 (Minn. 1999).

#### **Specific, Articulable Facts Justified a *Terry* Search**

Under the *Terry* exception, police officers may stop and frisk a person when (1) the officer has a reasonable, articulable suspicion that a suspect might be engaged in criminal activity and (2) the officer reasonably believes the suspect might be armed and

dangerous. *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884-85 (1968). *Terry* searches are limited to protective frisks for weapons. *State v. Dickerson*, 481 N.W.2d 840, 844 (Minn. 1992) (*Dickerson I*), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993) (*Dickerson II*). The reasonable suspicion standard is not a high bar. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). But a police officer’s hunch is not enough: “While the standard is less demanding than probable cause or a preponderance of the evidence, it requires at least a minimal level of objective justification[.] . . . [Officers] must articulate a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Id.* (quotations and citation omitted); *Terry*, 392 U.S. at 21-22, 88 S. Ct. at 1880.

Harris argues that no specific, articulable facts justified the *Terry* search that led to his conviction. He contends that the officer unlawfully searched him based merely on his presence at a residence where officers were executing a search warrant. We disagree.

The officer articulated two reasons for subjecting Harris to a *Terry* search. Although the search warrant specifically authorized the search of a Minneapolis residence and a suspected drug dealer residing there, the supporting affidavit submitted with the warrant application included a statement by the officer’s confidential reliable informant (CRI) that a “second black male” also stayed at the residence. The officer testified that he believed Harris might be the second black male identified by his CRI:

DEFENSE COUNSEL: But [Harris] was not named in the search warrant?

OFFICER: He was not. A second black male, which I did not have a description

or a name for, was advised by my CRI that would be in the residence.

DEFENSE COUNSEL: And are you saying that you thought Mr. Harris was that second person?

OFFICER: I believed there was a good chance he could be the second person, yes.

In addition, the officer testified that based on his experience, he believed that Harris might be engaged in criminal activity: “Through my experience with search warrants, generally people dealing narcotics don’t have people just hanging out at their house. They’re either customers, users, or people that may supply them with narcotics.” The officer further testified that narcotics search warrants are dangerous and that he typically conducts pat frisks for weapons while executing narcotics warrants:

Every warrant has a potential of being dangerous because you’re entering the dwelling of another for a specific reason to recover evidence of narcotics. And then generally in a lot of cases firearms go hand and hand with narcotics. Dealers are known to defend their business with firearms and tend to be violent persons.

We conclude that the officer adequately testified why he believed Harris might be engaged in criminal activity and why he believed Harris might be armed and dangerous. The officer’s belief that Harris might be dealing or using narcotics, combined with his belief that narcotics and firearms “go hand and hand,” created a reasonable and articulable suspicion for the officer to search Harris under the *Terry* exception. *See State v. Bitterman*, 304 Minn. 481, 484-85, 232 N.W.2d 91, 94 (1975) (upholding a *Terry* search where appellant knocked on the door of a premises being lawfully searched and an

officer recognized appellant as a user of narcotics); *see also State v. Burton*, 556 N.W.2d 600, 602 (Minn. App. 1996) (finding a reasonable and articulable suspicion for a *Terry* search of appellant where appellant entered a known “crack house” during a drug bust), *review denied* (Minn. Feb. 26, 1997).

### ***Terry* Search Appropriately Confined in Scope**

The manner of the *Terry* search is as vital a part of the inquiry as whether it was warranted at all. *Terry*, 392 U.S. at 28, 88 S. Ct. at 1883. “Thus, evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation.” *Id.* at 29, 88 S. Ct. at 1884. *Terry* searches are not justified by the need to prevent the disappearance or destruction of evidence. *Id.* Therefore, they must “be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.” *Id.*

Harris argues that the officer’s search falls outside the *Terry* exception because the officer testified that he searched Harris for weapons, narcotics, and contraband:

PROSECUTOR: What else did [Harris] say?

OFFICER: And that he would be in trouble with his parole officer.

PROSECUTOR: When he said that to you, what . . . action did you take?

OFFICER: I placed him in handcuffs and *searched him for contraband and weapons.*

...

PROSECUTOR: Now, I'm going to ask you to describe in detail what you did when you first started searching [Harris]?

OFFICER: You start up the shoulders and arms area and work your way down through the body. Usually in quadrants. Basically cutting the body up in quarters to *search it for weapons, and narcotics or contraband.*

But an officer's improper motive to discover narcotics or contraband does not necessarily invalidate the search. *Dickerson I*, 481 N.W.2d at 844 (citing *Horton v. California*, 496 U.S. 128, 138-39, 110 S. Ct. 2301, 2308-10 (1990)); (“[A]n improper motive does not invalidate an otherwise lawful search.”); *see also State v. Pleas*, 329 N.W.2d 329, 332 (Minn. 1983) (“[A] search must be upheld, at least as a matter of federal constitutional law, if there was a valid ground for the search, even if the officers conducting the search based the search on the wrong ground or had an improper motive.”). “The fact that an officer is interested in an item of evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in area and duration by . . . a valid exception to the warrant requirement.” *Horton*, 496 U.S. at 138, 110 S. Ct. at 2309.

Here, we conclude that because the search was appropriately confined in scope, the officer's motive did not invalidate the seizure. The officer conducted a pat-down search, starting at Harris's shoulders and arms and continuing down through the rest of Harris's body. The officer did not place his hands inside Harris's zipper area until he felt an object that he immediately recognized as narcotics. And under the plain-feel

exception, an officer may seize contraband he discovers through sense of touch during an otherwise lawful search. *Dickerson II*, 508 U.S. at 375-76, 113 S. Ct. at 2137.

The Supreme Court explained the plain-feel exception in *Dickerson II*:

If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context.

“The phrase ‘immediately apparent’ does not mean that an officer must be certain about the object's identity; rather, an officer must ‘have probable cause to believe that the item is contraband before seizing it.’” *State v. Krenik*, 774 N.W.2d 178, 185 (Minn. App. 2009) (quoting *Dickerson II*, 508 U.S. at 376, 113 S. Ct. at 2137), *review denied* (Minn. Jan. 27, 2010).

The officer testified that when he patted down the outside of Harris's front-zipper area, he felt an object that he believed was narcotics. The officer further testified that he *first* immediately knew that the object was narcotics, and *then* he manipulated it. When asked if it was in that sequence, the officer responded affirmatively:

PROSECUTOR: Now, just a few minutes ago you said two things. You said you felt it, you immediately knew it was narcotics, and then you manipulated it?

OFFICER: Yes.

PROSECUTOR: Was it in that sequence?

OFFICER: Yeah.

The officer also testified that he has felt narcotics before when doing frisks for weapons, and therefore, he immediately knew that the object he felt in Harris's front-zipper area was narcotics. Thus, the officer's testimony adequately supports the district court's finding that the "discovery of the narcotics falls within the 'plain feel' exception." *See, e.g., Harris*, 590 N.W.2d at 104 ("If, during the course of this protective pat-down search, an officer locates what he immediately and without further manipulation has probable cause to believe is evidence of a crime, then the officer may legally seize that evidence.").

Finally, because we conclude that the search and seizure was lawful under the *Terry* and plain-feel exceptions, we need not determine whether it was also lawful as a search incident to arrest.

**Affirmed.**