

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1443**

State of Minnesota,
Respondent,

vs.

Terrell Cavanaugh Griffin,
Appellant.

**Filed June 25, 2012
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CR-10-925

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Roy G. Spurbeck, Kathryn J. Lockwood, Assistant Public Defenders, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's pretrial ruling denying his motion to suppress evidence that he argues was the result of an illegal search. We affirm.

FACTS

Minneapolis Police Sergeants Paul Hatli and Eric Madson were patrolling the Little Earth housing complex on August 22, 2009, as off-duty security officers. Just after midnight, they made eye contact with appellant Terrell Griffin as Griffin was leaving a gated patio area of a house. The officers began questioning Griffin about the occupants inside the home, but Griffin continued walking. Sergeant Hatli then noticed “a sudden movement on [Griffin’s] right hand, with [Griffin’s] right hand to his waistband.” Sergeant Hatli later explained, “In my history of doing this job, I’ve had numerous people do that to me and they’ve ended up having guns on them.” Sergeant Madson saw Griffin make a “stutter step” and reach for his waist. Sergeant Madson stated that, in his experience, a stutter step was a common movement made by “suspects on the street[] when they are preparing to run from the police.” Sergeant Hatli grabbed Griffin’s arm, escorted him to the fence, patted him down, and discovered a loaded nine-millimeter handgun in Griffin’s waistband.

Because Griffin had been convicted of controlled-substance crimes in 2003 and 2007, he was not permitted to carry a firearm. He was charged with illegally possessing a firearm under Minn. Stat. § 624.713 (2008). Griffin moved to suppress the gun evidence, which he claimed was obtained as the result of an illegal stop and search. The district court heard testimony from the two officers and Griffin and denied the motion. Griffin stipulated to the state’s case in order to obtain review of the pretrial ruling under Minn. R. Crim. P. 26.01, subd. 4. The district court found him guilty. This appeal follows.

DECISION

Following a stipulated-facts proceeding under Minn. R. Crim. P. 26.01, subd. 4, our review is limited to the question of whether the district court properly denied Griffin's pretrial motion to suppress evidence stemming from a stop and frisk. *See* Minn. R. Crim. P. 26.01, subd. 4(f). "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 . . . not suppressing . . . the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Griffin argues that the search that uncovered a firearm in his waistband was unconstitutional. Although the United States and Minnesota constitutions prohibit unreasonable searches and seizures, U.S. Const. amend. IV; Minn. Const. art. I, § 10, a police officer may stop and frisk an individual if the officer has "reasonable, articulable suspicion that [the individual] might be engaged in criminal activity" and "reasonably believes [that the individual] might be armed and dangerous." *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968)).

Griffin was stopped because he reached for his waistband in a manner that suggested gun possession and because he made a "stutter step," suggesting he intended to flee. These facts are sufficient to support a stop and frisk because they suggest criminal activity and that Griffin was armed. Griffin's argument that "there [are] many innocent reasons why a person would reach toward his waistband" and "[Sergeant] Hatli had no reason to believe [he] was engaged in criminal activity" is not persuasive. First,

reasonable suspicion can be found when a person's behavior is consistent with innocent activity. *State v. Combs*, 398 N.W.2d 563, 565 (Minn. 1987). Second, police suspicion of gun possession can support a stop, even if the police have no additional basis to suspect illegal activity. *State v. Timberlake*, 744 N.W.2d 390, 397 (Minn. 2008) (holding that the police had reasonable suspicion to stop a vehicle based on information that a passenger possessed a gun, even though the police had no information regarding whether or not the passenger was legally permitted to possess a gun); *see also State v. Williams*, 794 N.W.2d 867, 873 (Minn. 2011) (holding that a police officer had probable cause to arrest an individual who had a gun protruding from his sweatshirt even though the police officer did not know whether the individual was legally permitted to carry the gun). And third, the suspicion that Griffin was carrying a gun was coupled with Griffin's evasive "stutter step." Evasiveness, when coupled with other suspicious facts, can support reasonable suspicion. *See Dickerson*, 481 N.W.2d at 843 (holding that evasive conduct after making eye contact with police, combined with presence in a high-crime area supported reasonable suspicion for stop).

Affirmed.