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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1295**

State of Minnesota,
Respondent,

vs.

Tameko Luche Stocker,
Appellant.

**Filed March 17, 2014
Affirmed
Schellhas, Judge**

Ramsey County District Court
File No. 62-CR-12-6247

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Kirk M. Anderson, Anderson Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's denial of his suppression motion, arguing that the seizure of his person and search of his bags were unconstitutional. We affirm.

FACTS

In February 2012, a Portland, Oregon, drug-enforcement group sent a tip to the Minneapolis-St. Paul Airport Police Department that appellant Tameko Stocker would be arriving in Minneapolis on an Amtrak train from Portland on February 12. The drug-enforcement group considered Stocker's behavior to be suspicious because he was traveling from Portland, a source city for marijuana, and had booked a sleeper car, which enables a passenger to avoid interacting with anyone for the entire journey. Sergeant Todd Husby, supervisor of the Minneapolis-St. Paul Airport Police Department Special Investigations Division, received the tip from Oregon, conducted a criminal background check of Stocker, and learned that Stocker had been arrested for narcotics in 2004 and was connected to a money seizure related to narcotics.

Based on this information, Sgt. Husby arranged for a group of officers that included a drug-sniffing K-9 to be present at the train station when Stocker's train arrived. All of the officers, including Sgt. Husby, were in plainclothes and had no visible weapons or police insignia. Two officers spotted Stocker as he disembarked from the train, and they attempted to engage him in consensual conversation, but Stocker did not stop to speak with them. Stocker carried a red suitcase and a black duffel bag and walked from the train into a public restroom inside the train terminal. As Stocker walked toward the restroom, an officer with a drug-sniffing dog attempted to approach him, but the dog was unable to sniff the suitcase or bag for drugs. In the restroom, the dog sniffed Stocker's suitcase and bag but did not alert to the presence of drugs, and the officer left the restroom with the dog.

Two or three minutes after the officer and dog left the restroom, Sgt. Husby entered the restroom and saw Stocker inside a stall with the door open. Stocker had a blue suitcase that Sgt. Husby had not previously seen. The red suitcase and black duffel bag were on the floor outside the stall. Sgt. Husby approached Stocker and asked what he was doing. Stocker responded, "It's not my suitcase," and pushed past Sgt. Husby to exit the stall, leaving the blue suitcase in the stall. Stocker took the red suitcase and black duffel bag and quickly left the restroom. Sgt. Husby grabbed the blue suitcase, followed Stocker to the front door of the terminal, and told officers to "grab" Stocker. The officers identified themselves as police, and Stocker struggled with the officers and fell to the ground on the roadway outside the terminal. Officers fell on top of him while attempting to handcuff him. Sgt. Husby believed that he was arresting Stocker "at least long enough to figure out what was going on."

The officers brought Stocker and his bags back into the terminal. Using a pen to open a padlocked zipper on the blue suitcase, Sgt. Husby discovered seven one-pound bags of marijuana inside the suitcase. The black duffel bag contained a key that fit the lock on the blue suitcase. Later, the police determined that the blue suitcase fit inside the red suitcase.

Respondent State of Minnesota charged Stocker with violation of fifth-degree controlled-substance law under Minn. Stat. § 152.025, subds. 2(a)(1), 2(b) (2010). Stocker moved to suppress the evidence found in the bags, and the district court denied the motion. Stocker waived his right to a jury trial under Minn. R. Crim. P. 26.01, subd.

4. The district court found him guilty and convicted him of fifth-degree controlled-substance crime. This appeal follows.

DECISION

Stocker argues that the district court erred by denying his suppression motion. When reviewing pretrial orders concerning the suppression of evidence, an appellate court reviews the district court's legal determinations de novo and its factual findings for clear error. *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012). The United States and Minnesota Constitutions prohibit “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. “A defendant’s ‘rights to challenge any search under Article I, Section 10 of the Minnesota Constitution are coextensive with [the defendant’s] rights under the Fourth Amendment to the United States Constitution.’” *State v. Griffin*, 834 N.W.2d 688, 695–96 (Minn. 2013) (quoting *State v. Carter*, 596 N.W.2d 654, 656 (Minn. 1999)). “[An appellate court] review[s] de novo a district court’s ruling on constitutional questions involving searches and seizures.” *State v. Anderson*, 733 N.W.2d 128, 136 (Minn. 2007).

Dog Sniff

Stocker first argues that the dog sniff of his luggage was unconstitutional because the police did not possess reasonable, articulable suspicion for the search. The district court concluded that the dog sniff was not legally relevant because the dog sniff did not result in the discovery of any evidence to which the exclusionary rule could be applied. We agree. Regardless of whether the police possessed reasonable, articulable suspicion to

conduct the dog sniff of Stocker's luggage, the sniff produced no evidence and therefore the exclusionary-rule remedy is inapplicable.

Seizure of Stocker

The district court concluded that the police seized Stocker for an investigatory stop when Sgt. Husby instructed officers to "grab" Stocker as he attempted to leave the terminal. Stocker argues that Sgt. Husby seized him when Sgt. Husby approached him in the restroom. Stocker's argument is unpersuasive.

A person is seized within the meaning of the Fourth Amendment when, under the totality of the circumstances, "a reasonable person in the defendant's shoes would have concluded that he or she was not free to leave." *In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993). Circumstances that may indicate a seizure has taken place, even if a person has not attempted to leave, include "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Id.* at 781 (quoting *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877 (1980)). "A person generally is not seized merely because a police officer approaches him in a public place" *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

We conclude that Sgt. Husby did not seize Stocker when he approached him in the restroom. Nothing in the record suggests that Sgt. Husby acted in a way that would cause a reasonable person to think that he or she could not terminate the encounter and leave. Sgt. Husby wore plainclothes, did not order Stocker to do anything, and did not attempt

to stop him from leaving. Although Sgt. Husby's approach in the restroom was preceded by plainclothes officers' attempt to engage Stocker in conversation and a dog's sniff of his luggage, none of the circumstances alone or together would cause a reasonable person in Stocker's situation to feel that he was not free to leave. The district court correctly concluded that Sgt. Husby did not seize Stocker when Sgt. Husby approached him in the restroom.

For an investigative stop to be lawful, the police must possess reasonable, articulable suspicion that criminal activity was afoot. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). The reasonable suspicion standard has been met “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.* (quoting *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997)). Although Sgt. Husby knew that the K-9 drug dog had not alerted on Stocker's red suitcase or black duffel bag, Sgt. Husby saw Stocker in the restroom stall with a third bag—the blue suitcase. And when Sgt. Husby questioned Stocker about what he was doing, Stocker pushed past Sgt. Husby and responded, “It's not my suitcase,” then walked very quickly toward the exit of the terminal. These circumstances caused Sgt. Husby to have reasonable suspicion of criminal activity sufficient to support an investigative stop. The district court correctly concluded that the police lawfully seized Stocker to investigate his activity when they stopped him as he attempted to leave the terminal.

Stocker's Arrest

Stocker argues that the police arrested him when they seized him as he was attempting to leave the terminal, before the police found the marijuana in the blue suitcase. The district court concluded that the police arrested Stocker after they discovered what they believed to be marijuana in the blue suitcase. We agree with the district court.

When the police stopped Stocker as he was attempting to leave the terminal, they did so to conduct an investigative stop. An investigative stop is reasonable when it is the brief restriction of a person “limited in scope and duration to its initial justification.” *State v. Balenger*, 667 N.W.2d 133, 139 (Minn. App. 2003) (citing *Terry v. Ohio*, 392 U.S. 1, 19–20, 88 S. Ct. 1868, 1879 (1968)), *review denied* (Minn. Oct. 21, 2003). Although Sgt. Husby testified that he thought he was arresting Stocker when the police handcuffed Stocker, he also testified that he was detaining Stocker “at least long enough to figure out what was going on.” An officer’s subjective belief that he has effected an arrest is not controlling. *See State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984) (“The fact of whether or not the officers subjectively felt they had probable cause does not foreclose the conclusion that they had objective probable cause.”). When the police seized and handcuffed Stocker, they did so to conduct an investigatory stop, not an arrest, because the police intended only to detain Stocker briefly to investigate their suspicions.

Stocker argues that the force that the police used to stop him transformed the investigative stop into an arrest. “There is no bright-line test separating a legitimate investigative stop from an unlawful arrest.” *Balenger*, 667 N.W.2d at 139. To determine

whether an officer's conduct transformed an investigative stop into an arrest, a court must evaluate the aggressiveness of police methods and the intrusiveness of the stop in comparison to the justification for the use of those methods. *Id.* Because Stocker's failure to stop for police necessitated their pursuit of and struggle with him, the police action did not turn an investigative stop into an arrest.

After the police opened the blue suitcase and found the marijuana, they had probable cause to arrest Stocker. *See State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011) ("Probable cause to arrest exists when a person of ordinary care and prudence, viewing the totality of circumstances objectively, would entertain an honest and strong suspicion that a specific individual has committed a crime." (emphasis omitted) (quotation omitted)). The district court did not err in concluding that Stocker's arrest was constitutional because it was supported by probable cause.

Search of the Blue Suitcase

The district court concluded that Stocker abandoned the blue suitcase in the restroom and therefore had no reasonable expectation of privacy in it. "When property is abandoned . . . generally the owner no longer has a reasonable expectation of privacy and the exclusionary rule will not apply." *State v. Askerooth*, 681 N.W.2d 353, 370 (Minn. 2004). "But, if the property is abandoned because of an unlawful act by police officers, it will not be admissible as evidence." *Id.* Here, Stocker abandoned the blue suitcase in the restroom and therefore had no reasonable expectation of privacy in its contents. Nothing in the record suggests that Stocker abandoned the blue suitcase because of an unlawful act by police officers.

Search of the Red Suitcase and Black Duffel Bag

The district court concluded that the searches of Stocker's red suitcase and black duffel bag were proper searches incident to arrest. Stocker argues that, even if his arrest was lawful, the related search of his bags was not lawful because he was handcuffed and could not access them. A search incident to arrest is an exception to the warrant requirement, *State v. Ortega*, 770 N.W.2d 145, 149–50 (Minn. 2009), and allows police to search “the person and the area within the control of that person,” *State v. Bauman*, 586 N.W.2d 416, 419 (Minn. App. 1998), *review denied* (Minn. Jan. 27, 1999). The record indicates that Stocker was carrying his bags when police stopped him. The bags were within his control when he was stopped and remained so when he was arrested. *See Geer v. State*, 406 N.W.2d 34, 36 (Minn. App. 1987) (affirming as a lawful search incident to arrest the search of suspect's duffel bag that was 35 to 40 feet from suspect who was lying face down on ground) (citing *State v. Rodewald*, 376 N.W.2d 416, 419–20 (Minn. 1985)), *review denied* (Minn. July 15, 1987); *cf. State v. Fisher*, 588 N.W.2d 515, 517 (Minn. App. 1999) (discussing “immediate control” test enunciated in *Chimel v. California*, 395 U.S. 752, 763, 89 S. Ct. 2034, 2040 (1969), and holding that “district court did not err in ruling an area about 15 feet away from a handcuffed and guarded arrestee is not within the ‘immediate control’ of the arrestee”), *review denied* (Minn. Apr. 20, 1999). We conclude that the search of Stocker's red suitcase and black duffel bag, which were in his possession at the time of his arrest, was lawful.

The district court did not err by denying Stocker's suppression motion.

Affirmed.