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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2042

State of Minnesota,
Respondent,

vs.

Edell Jackson,
Appellant.

Filed January 7, 2013
Affirmed
Collins, Judge[*]

St. Louis County District Court
File No. 69DU-CR-10-1331

Lori Swanson, Minnesota Attorney General, Michael T. Everson, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

David Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appellant challenges his conviction of second-degree sale of a controlled substance, arguing that he was illegally seized and the district court erroneously refused to suppress evidence recovered thereafter. We affirm.

FACTS

On April 20, 2010, Duluth Police Investigator Matthew McShane was on duty as a member of the department's Neighborhood Impact Team, a "purely proactive unit" involved in street-level investigations and neighborhood cooperation. While patrolling a very familiar neighborhood, Investigator McShane saw a man he did not recognize. The man, an African-American later identified as appellant Edell Jackson, was walking on the sidewalk a few doors away from "a known drug house" that was allegedly harboring an African-American male with an outstanding arrest warrant from Ramsey County.[1] Investigator McShane, wearing street clothes and a police vest, stopped his vehicle alongside Jackson. From the vehicle, Investigator McShane asked Jackson "if he could hold on a minute" because he "would like to chat with him."[2] Jackson turned, looked into Investigator McShane's unmarked, but obviously fully equipped, police vehicle, and "immediately turned and ran."

[1] It was later determined that Jackson was not the subject of any outstanding warrants.

[2] On appeal, Jackson asserts that Investigator McShane "acknowledged on cross-examination and wrote in his report that he told Mr. Jackson to 'hold on a minute, I needed to speak with him.'" The record, which does not include Investigator McShane's report, does not confirm this assertion.

Investigator McShane contacted his dispatcher and pursued Jackson on foot. During the chase, lasting a minute or two, Investigator McShane saw Jackson discard "a couple of items," including what Investigator McShane believed to be marijuana. After Investigator McShane apprehended Jackson, another officer arrived and recovered the discarded items, which were later identified as heroin, crack cocaine, and marijuana, packaged in a prescription pill bottle and baggies.

The state charged Jackson with five drug-related offenses, including second-degree sale of a controlled substance, in violation of Minn. Stat. § 152.022, subd. 1(1) (2008), and one count of fleeing a peace officer on foot, in violation of Minn. Stat. § 609.487, subd. (6) (2008). Jackson moved to suppress the recovered contraband, arguing that he was illegally stopped and seized. Following a contested omnibus hearing and written argument, the district court denied the motion, and the case was tried. The jury found Jackson guilty as charged. The district court adjudicated the conviction of second-degree sale of a controlled substance and sentenced Jackson to 78 months' imprisonment. This appeal followed.

D E C I S I O N

Jackson contends that he was seized when Investigator McShane "approached [him] on the street."[3] Because this "initial encounter" was not lawful, Jackson argues, the district court erred by refusing to suppress evidence recovered thereafter.

[3] Jackson cites Minn. R. Civ. App. P. 128.01, subd. 2, for the proposition that he may rely on a memorandum submitted to the district court for his legal argument on appeal. Jackson's reliance on the *civil* appellate rules is not misplaced. *See State v. Pflepsen*, 590 N.W.2d 759, 763 (Minn. 1999) (stating that when the relevant criminal rule "is silent, the

"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). If Jackson was seized at any point before Investigator McShane had reasonable, articulable suspicion of criminal activity, then Jackson was illegally seized and evidence recovered thereafter must be suppressed. *See id.* at 97.

Because Jackson does not challenge the district court's conclusion that Jackson's unprovoked flight created a reasonable, articulable suspicion of criminal activity, the issue presented is whether Jackson was seized before fleeing. In Minnesota, "a person has been seized if in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter." *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995); *see Matter of Welfare of E.D.J.*, 502 N.W.2d 779, 780-82 (Minn. 1993). Generally, under this objective standard, "when an officer merely approaches [a] person in a public place and begins to ask questions," the person has not been seized. *Cripps*, 533 N.W.2d at 391; *see E.D.J.*, 502 N.W.2d at 782. But a demand, rather than a request, or questions that would cause a reasonable person to believe "that he or she was being

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Rules of Civil Appellate Procedure govern criminal appellate procedure to the extent applicable"). But Jackson's counsel failed to comply with the cited rule, which permits reliance on district court memoranda "[i]f counsel elects, in the statement of the case, to rely upon memoranda submitted to the trial court supplemented by a short letter argument . . ." Minn. R. Civ. App. P. 128.01, subd. 2. Despite counsel's noncompliance, in order to fully understand the matter before us, we consider Jackson's memorandum to the district court.

asked to prove his or her innocence of [a specific] crime" may constitute a seizure. *Cripps*, 533 N.W.2d at 391; *see E.D.J.*, 502 N.W.2d at 781-83.

The record before us shows that Investigator McShane stopped his vehicle alongside Jackson and merely asked "if he could hold on a minute" to "chat with him." We conclude that Jackson was not at that point seized. *See Cripps*, 533 N.W.2d at 391. Because Jackson was not seized before he fled from Investigator McShane, and Jackson does not challenge the district court's conclusion that his unprovoked flight supports a seizure, we conclude that the district court did not err in refusing to suppress the recovered evidence.

Affirmed.