**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-1855**

State of Minnesota,
Respondent,

vs.

Isaiah David Pirtle,
Appellant.

**Filed August 26, 2013**
**Affirmed**
**Chutich, Judge**

Ramsey County District Court
File No. 62-CR-12-469

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

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

David W. Merchant, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, Daniel Weber (certified student attorney), St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Chutich, Judge.

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

**CHUTICH**, Judge

On appeal from his conviction of possession of a firearm by an ineligible person, appellant Isaiah David Pirtle contends that the district court erred in denying his motion to suppress the gun. He asserts that police officers violated his constitutional rights when they seized him without reasonable, articulable suspicion that he was involved in criminal activity. Because police officers found the firearm during a lawful search following Pirtle's flight from officers, we affirm the district court's denial of Pirtle's motion to suppress the gun and his conviction.

## FACTS

The facts of this case are undisputed. One morning in January 2012, St. Paul Police Sergeant Dan Zebro was driving in an unmarked police car when he saw two men near the bus shelter at the corner of Lexington and University Avenues. Sergeant Zebro knew that a police investigation of narcotics trafficking in the previous week involved one of the two men. He therefore requested that nearby patrol officers approach and identify the men.

Officer Heather Teff was the first to arrive at the bus stop, followed by Officer Jason Bain. Officer Teff asked the men if she could speak with them; the men did not refuse and one of the men, Pirtle, conversed with Officer Teff. While the officers were speaking with the men, the men were inside the bus shelter, facing the street, and the officers were standing in front of the men with their backs to the street. Officer Teff asked the men if they had seen anyone harassing an elderly woman at the bus stop. The

officer had no report of any harassment, but used the question to initiate conversation. The men said that they had not seen anyone harassing an elderly woman, and continued speaking with the officers.

When Officer Teff asked the men for identification, Pirtle told her that his name was Isaiah Williamson; he was from Cedar Rapids, Iowa; he was in town visiting a friend; and that the person with him was his cousin. The second man gave his name as Maurice Dixon. Pirtle told Officer Teff that he did not have a phone number, but later took out a cellular phone and used it. Officer Teff testified that Pirtle appeared nervous and his hands were shaking.

Officer Bain ran a check of the names provided by the two men through the police system. The check returned results of "not on file" for both names which, Officer Teff testified, is a common indicator that a person gave a false or incorrect name. Pirtle then asked Officer Teff if he could go into a nearby restaurant to use the bathroom. Officer Teff responded that he should wait and told him that they were "almost done."

When Officer Teff moved towards her squad car to inform Sergeant Zebro of the unverified names the men provided, Pirtle began to run west on University Avenue. Officer Todd Bjorkman, who was in a squad car near the scene at the time, tried to stop Pirtle. The officer got out of his car, ordered Pirtle to stop, and attempted to restrain him. Pirtle then pushed or kicked Officer Bjorkman and resumed running. Officer Teff arrived and blocked Pirtle's path, and Officer Bjorkman restrained him. After the officers handcuffed Pirtle, he informed them that he had a pistol in his jacket and they removed a .22 caliber revolver from his pocket.

Charged with possession of a firearm by an ineligible person, Pirtle moved to suppress the gun, claiming that the seizure was illegal. The district court denied Pirtle's motion, finding that although Pirtle was seized at the bus stop when he asked to use the bathroom and was told by Officer Teff to wait, the officer "had specific facts giving rise to reasonable suspicion of criminal activity afoot." The totality of the circumstances cited by the district court included information that one of the two men was involved in a recent drug investigation; the officers' name check of the men returned a "not on file" response—a common indicator of a false name; and Pirtle's nervousness. In addition, the court concluded that the search incident to arrest following Pirtle's flight from police and resistance to arrest was lawful.

Following denial of his suppression motion, Pirtle agreed to proceed under Minnesota Rule of Criminal Procedure 26.01, subdivision 4. At the rule 26 hearing, the parties agreed that the pretrial issue was dispositive of the ultimate conclusion in this case, and that any appeal would be limited to a challenge to "whether or not the cops lawfully stopped and seized . . . and searched [Pirtle]." The district court found Pirtle guilty and sentenced him to 60 months in prison. This appeal followed.

## D E C I S I O N

When this court reviews a pretrial order on a motion to suppress where, as here, the facts are not in dispute, it reviews the decision de novo and "determine[s] whether the police articulated an adequate basis for the search or seizure at issue." *State v. Flowers*, 734 N.W.2d 239, 247–48 (Minn. 2007); *see also State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011) (stating that an appellate court reviews de novo a district court's

determination of probable cause or reasonable suspicion of illegal activity). We accept the district court's factual findings unless they are clearly erroneous. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

The Fourth Amendment to the United States Constitution and Article I, section 10 of the Minnesota Constitution guarantee a person's right to be free from unreasonable searches and seizures. Evidence resulting from an unreasonable seizure or other constitutional violation usually must be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177–78 (Minn. 2007); *State v. Harris*, 590 N.W.2d 90, 97 (Minn. 1999). Generally, however, "evidence of a crime committed in response to an illegal police arrest or search is not suppressed as the fruit of the prior illegality." *State v. Ingram*, 570 N.W.2d 173, 178 (Minn. App. 1997), *review denied* (Minn. Dec. 22, 1997). Where an initial search or seizure was illegal, this court must ask "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Id*. (quotation omitted).

Pirtle argues that the police unconstitutionally seized him at the bus stop without reasonable suspicion that he was engaged in criminal activity and that the gun seized following his arrest must therefore be suppressed. The state concedes that whether the initial seizure was supported by articulable suspicion is a close call, but argues that Pirtle's actions in pushing or kicking an officer and actively resisting arrest purged the taint of any earlier alleged illegal seizure. We need not decide whether the initial seizure was justified because we agree that Pirtle's flight made the ensuing search lawful.

"Minnesota courts have generally held that resisting arrest and flight from a police officer, even if prompted by illegal police conduct, are intervening circumstances sufficient to purge the illegality of its primary taint." *Id*. Pirtle does not challenge the district court's finding that he "pushed or kicked Officer Bjorkman and resumed running" after the officer attempted to stop him. Pirtle fled the police and resisted arrest. Once apprehended, Pirtle told the officers that he had a gun in his jacket. Even if we concluded that the initial seizure of Pirtle was unsupported, Pirtle's flight and resistance of arrest are enough to "purge any illegality of its primary taint." *See id*. at 179.

Pirtle asserts that the state waived any argument regarding his flight and resistance of arrest because rule 26 proceedings limit the issue on appeal to the legality of the seizure, not the application of the exclusionary rule, and because the state did not make any such argument to the district court. We disagree. Pirtle specifically agreed at the plea hearing that whether his search was lawful was an issue reviewable on appeal. Moreover, Pirtle's motion to suppress inherently involved the exclusionary rule. *See State v. Bergerson*, 659 N.W.2d 791, 797 (Minn. App. 2003) (explaining that once a seizure has been deemed illegal, a court must weigh several factors to determine whether the exclusionary rule applies). Finally, although the state did not specifically raise the resistance-to-arrest argument to the district court, it may properly raise the argument here as an alternative basis for upholding the district court's denial of Pirtle's motion to suppress. *See State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003) ("A respondent can raise alternative arguments on appeal in defense of the underlying decision when there

are sufficient facts in the record for the appellate court to consider the alternative theories, and the alternative grounds would not expand the relief previously granted.").

Finally, Pirtle asserts that the state's alternative argument requires the state to concede that the pretrial issue was not dispositive of the case, thereby resulting in an invalid rule 26 hearing and requiring reversal. The state's alternative argument specifically focuses on the legality of the search, however. As discussed above, the search that resulted in the seizure of the gun was lawful as incident to a lawful arrest. This pretrial ruling was in fact dispositive of the case: if the gun were suppressed, the state could not prove that Pirtle was an ineligible person in possession of a firearm. The district court therefore properly denied Pirtle's motion to suppress.

**Affirmed.**