STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1183

State of Minnesota,
Respondent,

vs.

Levi Braziel, Jr.,
Appellant.

Filed June 9, 2014
Affirmed
Chutich, Judge

Hennepin County District Court
File No. 27-CR-12-27717

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and Chutich, Judge.

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

CHUTICH, Judge

Appellant Levi Braziel Jr. contends that the district court improperly denied his pretrial suppression motion, asserting that the police officers illegally stopped him,

conducted the stop in an unreasonable manner, and illegally searched his vehicle. Because the officers had reasonable, articulable suspicion to stop Braziel to investigate a reliable tip that he had a gun and properly searched his car, we affirm.

FACTS

In the early morning hours of August 22, 2012, a woman called the Minneapolis 911 Call Center and said, "I know somebody outside with a gun on them and some drugs in a vehicle." The caller said she called 911 because the driver "threatened" her.

The dispatcher asked her how she knew about the gun and drugs, and she responded, "I was inside his vehicle. . . . 15 minutes ago." She told the dispatcher that she was at the "block of 24th and Elliot" and that the person was in a maroon Ford Expedition with "24 inch rims." She said that the Expedition was currently parked on Elliot Avenue between 24th and 25th Streets. She was unable to identify which way the Expedition was facing because she was "in the middle" of a townhouse and could not see the street.

The caller said the driver's "street name" was "L.A." and that she did not know his real name. She described the man as African American, approximately 35 years old, and 5'7" to 5'8" tall, with a heavy to medium build. She described him as wearing a red shirt, jeans, and "flip flops with no socks."

The caller asked to remain anonymous several times throughout the call, but she provided the dispatcher with her phone number. The caller also referenced her "uncle," who was talking in the background. She told the dispatcher that her girlfriend worked in the fourth precinct with "Officer Yang" and that the officer offered a $100 reward to

anyone who helped catch a person with a gun. When the dispatcher told the caller to provide her name to get the reward, the caller said that her name was "Katie."

At 4:49 a.m., Officers Christopher Bennett and Joseph Haspert responded to the radio transmission about "a person with a gun" in the area of East 25th Street and Elliot Avenue. The dispatcher told the officers that the gun and drugs were inside of a maroon Ford Expedition that was parked between 24th and 25th Streets on Elliot Avenue and that the driver "was a black male wearing a red shirt and possibly flip flops." The dispatcher also told the officers that the informant wanted to remain anonymous "[d]ue to threats."

The officers arrived at the scene one or two minutes after receiving the call. It was "pitch black" outside, and there was no traffic. The officers saw only one vehicle moving, a dark green Ford Expedition driving south on Elliot Avenue. Officer Bennett saw that the driver was an African-American man wearing a red shirt. Because the caller's description of the location, Expedition, and driver was consistent with the officers' observations, the officers stopped the Expedition. The driver immediately pulled over.

Because it was possible that the driver had a gun, the officers got out of the car and approached the Expedition with their weapons drawn. Officer Bennett walked up to the driver's side door, had the driver step out of the car, handcuffed the driver, and then pat searched him before he locked him in back of the police car. The driver, who was later identified as appellant Levi Braziel Jr. cooperated with Officer Bennett's commands.

While Officer Bennett approached and detained the driver, Officer Haspert opened the front, passenger-side door. Officer Haspert entered the Expedition and looked over the top of the front seat with his flashlight. He saw the handle of the handgun in a partially open bag behind the center console. Officer Haspert then opened the bag to fully see the gun. Officer Haspert was unable to tell precisely when Braziel was fully secured by Officer Bennett during this initial investigation.

The state charged Braziel with possession of a firearm by a prohibited person. *See* Minn. Stat. §§ 624.713, subd. 1(2), 2(b), .11 (2012). Braziel moved to suppress the gun discovered by Officer Haspert, and, after a contested omnibus hearing, the district court denied his motion. Braziel then entered a guilty plea with the intent of appealing the district court's denial of his suppression motion. This appeal followed.

D E C I S I O N

Braziel asserts that the district court improperly denied his motion to suppress the evidence of the gun because the police officers lacked reasonable, articulable suspicion to stop his vehicle, the officers did not stop him in a reasonable manner, and the officers improperly searched the vehicle. Because the officers properly stopped Braziel and investigated the tip that they had received, we affirm Braziel's conviction.[1]

[1] Braziel intended to stipulate to the prosecution's facts under Minnesota Rule of Criminal Procedure 26.01, subdivision 4, but instead entered a guilty plea under Minnesota Rule of Criminal Procedure 15.01, subdivision 1. He asks that this court review the pretrial suppression ruling by the district court even though he did not use the proper procedure to preserve the issue for appeal. The state agrees that the parties intended for Braziel to appeal the district court's pretrial suppression ruling under Minnesota Rule of Criminal Procedure 26.01, subdivision 4, and does not object to our review of the suppression issue. Given the parties' and district court's clear intent

"When reviewing pretrial orders on motions to suppress evidence, [this court] 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). The district court's findings of fact are reviewed under a clearly erroneous standard, and legal determinations are reviewed de novo. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006). "Findings of fact are clearly erroneous if, on the entire evidence, [this court is] left with the definite and firm conviction that a mistake occurred." *State v. Diede*, 795 N.W.2d 836, 846–47 (Minn. 2011).

A. The Caller and Reasonable, Articulable Suspicion for the Stop

Braziel contends that the anonymous caller did not provide the police with enough predictive information to give the police officers reasonable, articulable suspicion of criminal activity to stop and to seize Braziel. Because the caller provided sufficient identifying information and details about Braziel that were corroborated by the police officers' observations, we conclude that the investigatory stop was justified.

Under the United States and Minnesota Constitutions, unreasonable searches and seizures are prohibited. U.S. Const. amend. IV; Minn. Const. art. I, § 10. With a few exceptions, warrantless searches are per se unreasonable. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967). An officer may conduct a limited investigative stop

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regarding the proceeding, the interests of judicial economy underlying the *Lothenbach* procedure and the interests of justice persuade us to treat Braziel's plea as a not-guilty plea with stipulated facts under Minnesota Rule of Criminal Procedure 26.01, subdivision 4. *See State v. Lothenbach*, 296 N.W.2d 854, 857–58 (Minn. 1980).

if the officer has reasonable, articulable suspicion of criminal activity. *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996).

To meet the reasonable, articulable suspicion standard, an officer must "show that the stop was not the product of mere whim, caprice, or idle curiosity" but rather "was based upon 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *Id.* at 921–22 (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). We determine whether the officer had a reasonable basis to justify the stop by looking to "the events surrounding the stop and consider[ing] the totality of the circumstances." *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). The threshold for meeting the reasonable-suspicion standard is not high. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008).

An investigative stop may be based on an informant's tip if that tip is sufficiently reliable. *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). A tip from a private citizen is presumed to be reliable. *Marben v. State, Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980). In *Timberlake*, the supreme court held that a 911 call from a private citizen reporting that a person is carrying a firearm in a car provides reasonable articulable suspicion to justify an investigatory stop. 744 N.W.2d at 392, 397.

Moreover, an anonymous tip may be combined with corroborating evidence under a totality-of-the-circumstances analysis to establish the factual basis for reasonable, articulable suspicion. *Illinois v. Gates*, 462 U.S. 213, 233, 103 S. Ct. 2317, 2329 (1983). The United States Supreme Court recently held that an anonymous informant's tip on criminal activity was sufficiently reliable to justify a stop where a driver immediately

called 911 to report another driver of a truck "run[ning] her off the road" and the police officers located the truck in the area specified by the caller. *Navarette v. California*, 134 S. Ct. 1683, 1685 (2014).

Applying these principles, we conclude that the tip and corroborating evidence were sufficiently reliable to justify the traffic stop and investigatory search. First, this 911 caller seems more akin to a private citizen than to an anonymous tipster. The caller gave her first name, telephone number, and information about the location of her home, and her voice was being recorded. Moreover, her use of the 911 system is "[a]nother indicator of veracity." *See id.* at 1689. While 911 calls are not "*per se* reliable," the 911 system has "features that allow for identifying and tracing callers, and thus provide some safeguards against making false reports with immunity." *Id.* at 1689–90. Given these technological developments, "a reasonable officer could conclude that a false tipster would think twice before using such a system." *Id.* at 1690.

Next, and even more importantly, the caller claimed eyewitness knowledge of the alleged dangerous behavior. Eyewitness knowledge "lends significant support to the tip's reliability," even when the caller is anonymous. *Id.* at 1689. Here, the caller told the police that she had personally seen the gun in the Ford Expedition only fifteen minutes before she called 911. This personal knowledge distinguishes this case from those relied upon by Braziel to assert that, to be reliable, the informant must predict his future activity. *See Alabama v. White*, 496 U.S. 325, 325–26, 110 S. Ct. 2412, 2414 (1990) (holding informant's tip reliable because police corroborated future acts of suspect predicted by the informant); *Florida v. J.L.*, 529 U.S. 266, 271, 120 S. Ct. 1375, 1379

(2000) (holding informant's tip unreliable because informant did not disclose basis for knowledge of suspect's criminal activity).

Finally, the caller provided information to the dispatcher that was corroborated by Officers Bennett and Haspert, giving the police reason to think that the caller was telling the truth. The caller said that an Expedition with large rims would be in the area of 24th and 25th Streets and Elliot Avenue. She said the driver was a 35-year-old, African-American man and that he was wearing a red shirt. Two minutes after receiving a call from dispatch, the officers arrived in the area specified by the caller. They immediately saw an African-American man in a red shirt driving a dark green Expedition with large rims. The officers saw no other cars moving in the area. It was dark outside, which may explain why the caller thought that the Expedition was maroon instead of dark green.

In sum, because the caller was likely a private citizen who used the 911 system to provide first-hand information that was corroborated by the police officers' observations, the totality of the circumstances shows that the caller's tip was reliable. *See Navarette*, 134 S. Ct. at 1689–92; *Gates*, 462 U.S. at 233, 103 S. Ct. at 2329; *Marben*, 294 N.W.2d at 699. For these reasons, we hold that the police officers had reasonable, articulable suspicion of criminal activity to stop Braziel.

B. Reasonable Manner for the Stop

Braziel further objects to the manner in which the officers stopped him and investigated the situation. Specifically, he argues that the officers acted unreasonably by approaching him with their guns drawn, shouting at him to put his hands in the air, pulling him from the car, searching him, handcuffing him, and locking him in their squad

car. Because the officers had reliable information that Braziel possessed a gun, the officers' actions were reasonable under the circumstances.

For a *Terry* stop to be reasonable, it must be "justified 'at its inception'" and the actions of the police must be "reasonably related in scope to the circumstances that justified the stop in the first place." *State v. Balenger*, 667 N.W.2d 133, 137 (Minn. App. 2003) (quoting *Terry*, 392 U.S. at 19–20, 88 S. Ct. at 1879), *review denied* (Minn. Oct. 21, 2003). "The courts must also consider the totality of the circumstances and judge the facts against an objective standard, namely, whether the facts available to the officer at the moment of the stop would cause a person of reasonable caution to believe that the action taken was appropriate." *Id.* at 139. If a police officer reasonably believes that a person is armed and dangerous, the caselaw shows that the officer may proceed with his weapon drawn, frisk the person for weapons, briefly handcuff the person, and place the person in the back of the police car to safely conduct his investigation. *See, e.g.*, *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999).

Officers Bennett and Haspert acted reasonably under the circumstances. As analyzed above, the officers received a reliable tip that Braziel possessed a firearm and drugs. This tip gave the officers reasonable, articulable suspicion of criminal activity to stop Braziel's vehicle and pat search him to determine whether he had access to a weapon. *See Timberlake*, 744 N.W.2d at 397. To protect their safety while investigating in the "pitch black" morning hours a situation with a potential firearm and a person who had made "threats," the steps that the officers took were not unreasonable. *See Munson*, 594 N.W.2d at 137.

Braziel cites *State v. Fay*, 488 N.W.2d 322 (Minn. App. 1992), to support his claim that the evidence must be suppressed because the officers' use of force when detaining him was unreasonable. *Fay* involved officers executing a no-knock warrant on a private residence in a controlled-substance case where the police feared that the suspects would destroy evidence if they were alerted. 488 N.W.2d at 323. At least five officers smashed in the front door, confronted the appellant with drawn weapons, threw him to the floor, handcuffed him, blindfolded him, and questioned him. *Id.* at 324. This court held that the officers' conduct was excessive because it "evinced a deliberate disregard of Fay's constitutional rights." *Id.*

Fay is not analogous to this case. Where *Fay* involved a nonviolent drug offense and police entry into a home, this case involves a reported presence of a firearm and a stop of a vehicle. The police officers here had a reliable tip that Braziel had a weapon, justifying the drawing of their weapons. No evidence suggests that the officers physically abused or blindfolded Braziel. Because the facts in *Fay* differ markedly from Braziel's case, the officers' conduct here does not require suppression.

Braziel's reliance upon *State v. Flowers*, 734 N.W.2d 239, 255 (Minn. 2007) (requiring a new justification for an additional search of a car once "the quantum of evidence needed to justify a forcible stop has dissipated") (quotation omitted), and *State v. Waddell*, 655 N.W.2d 803, 810 (Minn. 2003) (upholding the warrantless stop and search of a car fitting the description of a car used in a recent armed robbery and carrying passengers matching the suspects' descriptions), is similarly misplaced. In neither case

did the supreme court rule that the initial actions of the police officers were unlawful. *Flowers*, 734 N.W.2d at 251, 255; *Waddell*, 734 N.W.2d at 810–11.

C. Search of Braziel's Vehicle

Braziel lastly contends that the officers' search of his vehicle impermissibly expanded the scope of the *Terry* stop because there was no protective purpose to it. Because the record shows that the limited search of the vehicle occurred before Braziel was confined in the squad car, we disagree.

The record shows that Officer Haspert opened the passenger-side door as Officer Bennett approached and restrained Braziel. Officer Haspert opened the door to get a better look at Braziel and to see if any weapons were in his reach. When he looked over the seat with his flashlight, he saw the gun in a partially opened bag. He looked for the gun that the caller identified because a gun near Braziel would have been a threat to both officers. Under these circumstances, we conclude that the limited search did not exceed the scope of the initial *Terry* stop to investigate a person with a gun.

Nothing in *State v. Flowers* requires a different conclusion. *Flowers* is distinguishable because, after a stop for a minor traffic infraction, the situation was admittedly "under control" and Flowers was in the squad car when the police summoned a drug-sniffing dog for a third search of the car. 734 N.W.2d at 254–55. After that failed, officers conducted a fourth search when they pried off a loose door panel and discovered a firearm. *Id.* at 245. The supreme court held that although Flowers' initial movements in the car gave police reasonable suspicion that he might be armed sufficient

to justify detaining and searching Flowers and the initial 30-second search of his car, their fourth search impermissibly expanded the scope of the stop. *Id.* at 253–55.

Contrary to *Flowers*, the search here did not exceed the scope of the police officers' reasonable search for a weapon within Braziel's car. The search took place as Braziel was being detained; it was not delayed or expanded as the subsequent searches in *Flowers* were. The officer here discovered the gun in plain sight during his initial search, and no impermissible subsequent search took place after reasonable suspicion dissipated.

Affirmed.