5/4/01

SUPREME COURT OF LOUISIANA

No. 00-K-0862

STATE OF LOUISIANA

v.

MELVIN DUMAS

On Writ of Certiorari to the
Second Circuit Court of Appeal

PER CURIAM:

In this prosecution for possession of a firearm by a previously convicted felon, La.R.S. 14:95.1, respondent moved to suppress the .25 caliber automatic seized from his back pocket by officers of the Shreveport Police Department assigned to the "Weed and Seed" Program targeting the Highland/Stoner Hill area of the city. After the trial court denied the motion, respondent entered a conditional plea of guilty as charged and sought review of the adverse suppression ruling in the court of appeal. State v. Dumas, 32, 925 (La. App. 2nd Cir. 1/26/00), 750 So.2d 439 (Gaskins, J., dissenting). The Second Circuit agreed with the trial court that the police officers had reasonable grounds for an investigatory stop based on defendant's apparent violation of city ordinances which prohibit walking in a roadway. Dumas, 32,925 at 5, 750 So.2d at 443 ("Due to the risk of harm that Defendant's action posed to his own safety, the officers acted reasonable in stopping Defendant to tell him not to walk in the roadway and to determine whether he was intoxicated."). However, the court of appeal disagreed with the lower court

that the officers also possessed reasonable grounds for patting down respondent and thereby discovering the weapon concealed in his back pocket. The court of appeal "declin[ed] to hold that an officer's knowledge of a defendant's criminal history alone is adequate to justify a patdown," and specifically noted that "rather than offering evidence which would support a belief that they were in danger, both officers testified that they were not afraid of [him]." Dumas, 32,925 at 8-9, 750 So.2d at 445. The Second Circuit therefore concluded that the frisk of respondent was not justified and set aside his conviction and sentence on grounds that the trial court had erred in denying the motion to suppress. We granted the state's application to review the correctness of that decision and now reverse.

In upholding the validity of the initial investigatory stop, the court of appeal properly conducted an objective inquiry into the totality of the circumstances surrounding the encounter. State v. Kalie, 96-2650, p. 3 (La. 9/19/97), 699 So.2d 879, 881 ("The circumstances 'must be judged by an objective standard: would the facts available to the officer at the moment of seizure or the search warrant a man of reasonable caution in the belief that the action taken was appropriate?'") (quoting State v. Flowers, 441 So.2d 707, 712 (La. 1983)). As the court of appeal concluded, the apparent violation of city ordinances under circumstances in which respondent was nearly struck in the middle of the street by a police cruiser transporting an arrested individual to the station house provided the requisite "'minimal level of objective justification'" for an investigatory stop. United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 1585, 104

L.Ed.2d 1 (1989) (quoting INS v. Delgado, 466 U.S. 210, 217, 104 S.Ct. 1758, 1763, 80 L.Ed.2d 247 (1984)).

However, in finding the subsequent pat down frisk of respondent unreasonable, the court of appeal erred in according substantial weight to the testimony of the officers at the suppression hearing that subjectively they were not afraid of respondent. The reasonableness of a frisk conducted as part of a lawful investigatory stop is also governed by an objective standard. The relevant question is not whether the police officer subjectively believes he is in danger, or whether he articulates that subjective belief in his testimony at a suppression hearing, but "whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." Terry v. Ohio, 392 U.S. 1, 27, 88 S.Ct. 1868, 1883, 20 L.Ed.2d 889 (1968). See United States v. Baker, 47 F.3d 691, 694 (5th Cir. 1995) ("This Court . . . has never held that an officer's objectively reasonable concern for safety does not justify a protective Terry pat down for weapons where the officer has no actual fear for his safety."); United States v. Cummins, 920 F.2d 498, 502 (8th Cir. 1990)("As we apply an objective standard of reasonableness to this determination [of a valid Terry search], our conclusion is not changed by [the officer's] testimony that he had no subjective fear that either Cummins or [his companion] were armed."); United States v. Tharpe, 536 F.2d 1098, 1101 (5th Cir. 1976)("We know of no legal requirement that a policeman must feel 'scared' by the threat of danger. Evidence that the officer was aware of sufficient specific facts as would suggest he was in danger satisfies the constitutional requirement."); O'Hara v. State, 27 S.W. 3d 548, 551 (Tex. Crim. App. 2000) ("Regardless of

whether [the officer] stated he was afraid, the validity of the search must be analyzed by determining whether the facts available to [the officer] at the time of the search would warrant a reasonably cautious person to believe that the action taken was appropriate.") (footnote omitted); 4 Warren R. LaFave, Search and Seizure, § 9.5(a), p. 253 (3rd ed. 1996) ("The test is an objective rather than a subjective one, just as with the probable cause needed to arrest or search, and thus it is not essential that the officer actually have been in fear.") (footnotes omitted); see also United States v. Menard, 95 F.3d 9, 11 (8th Cir. 1996); United States v. Bonds, 829 F.2d 1072, 1074-75 (11th Cir. 1987); Com. v. Joe, 40 Mass. App. Ct. 499, 665 N.E.2d 1005, 1012, n.13 (1996); State v. Evans, 67 Ohio St. 3d 405, 618 N.E.2d 162, 169-70 (1993); State v. Roybal, 716 P.2d 291, 293 (Utah 1986).

In the present case, both officers testified at the suppression hearing that while they were not "scared" of respondent they approached him with caution because they were aware that he was a convicted felon on probation for burglary.

While we agree with the majority on the Second Circuit panel that an individual's prior felony record does not alone provide reasonable grounds either for stopping or searching him, "an officer's knowledge of a suspect's prior criminal activity in combination with other factors may lead to a reasonable suspicion that the suspect is armed and dangerous." State v. Valentine, 134 N.J. 536, 636 A.2d 505, 511 (1994). We therefore concur with the dissenting views of Judge Gaskins in the present case that under the totality of the circumstances the officers had a reasonable, objective, and particularized basis for conducting a patdown frisk of respondent. Dumas, 32,925 at 1, 750 So.2d at 446 (Gaskins,

J., dissenting). Officer Jackson, who conducted the frisk, knew about respondent's prior burglary conviction because he had arrested or questioned him on at least four prior occasions. One of those incidents had involved respondent's arrest as he emerged from a stolen vehicle in the company of an individual wanted by the police for an armed robbery. Jackson found on the transmission hump between the front seats of the vehicle a .357 magnum pistol which had been accessible to both men. See Valentine, 636 A.2d at 511 ("In many instances, a reasonable inference may be drawn that a suspect is armed and dangerous from the fact that he or she is known to have been armed and dangerous on previous occasions."); State v. Collins, 121 Wash. 2d 1001, 847 P.2d 919, 922-23 (1993) (officer's knowledge that a holster and ammunition had been present in a vehicle associated with the defendant at the time of his prior arrest for a felony relevant to the reasonableness of frisk pursuant to a Terry stop). On another occasion, Jackson questioned respondent about the theft of dogs and during the interrogation respondent informed the officer that "You just don't know how crazy I am." According to the officer, respondent had been suspected of shooting the dogs. Finally, the stop in the present case had taken place in an area "riddled with crime." The officers frequently patrol it and had thereby gained considerable familiarity with respondent and several of his associates who had also been arrested on burglary charges.

Considering the totality of the circumstances which included Officer Jackson's specific knowledge of defendant's previous association with weapons and with persons carrying weapons, and with known felons, coupled with respondent's presence in a high-crime neighborhood, the trial court

correctly denied respondent's motion to suppress on grounds that the officers had not only reasonable suspicion for an investigatory stop but also reasonable grounds to conduct a limited Terry search for weapons.

Accordingly, the decision of the Second Circuit is reversed, respondent's conviction and sentence are reinstated, and this case is remanded to the district court for execution of sentence.

JUDGMENT OF COURT OF APPEAL REVERSED; CONVICTION AND SENTENCE REINSTATED; CASE REMANDED.