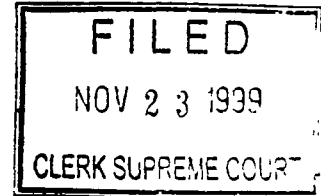


IN THE COURT OF APPEALS OF IOWA

No. 1999-296 (9-526) / 99-0110

Filed November 23, 1999



IN THE INTEREST OF M.A.S., Minor Child,

**M.A.S., Minor Child,
Appellant.**

Appeal from the Iowa District Court for Linn County, Susan F. Flaherty,
Associate Juvenile Judge.

M.A.S. was found to be in possession of a pistol, and subsequently adjudicated a juvenile delinquent based on a finding he committed the offense of carrying a weapon in violation of Iowa Code Section 724.4(1) (1997). On appeal following the court's dispositional order, he argues the pistol should have been suppressed from trial because he was illegally arrested prior to the pistol's discovery. **AFFIRMED.**

John E. Lane, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney General, Chris Odell, Assistant Attorney General, and Susan Conn, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

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HECHT, J.

M.A.S. appeals his adjudication as a juvenile delinquent based on a finding he committed the offense of carrying a weapon in violation of Iowa Code section 724.1(1) (1997). We affirm.

I. Background Facts and Proceedings. On October 19, 1998, officer Christopher Barnum ("Officer Barnum"), a Cedar Rapids police officer, was patrolling the southeast side of Cedar Rapids in the early morning hours. He heard a dispatch reporting several gunshots in the vicinity of 4th and 5th Avenue near 14th Street, Southeast. The dispatch reported two black males were seen running from the area where the gunshots had been heard. One of the suspects was said to have been wearing a white coat and the other was reported to be wearing a black coat and red pants. Officer Barnum and several other officers were dispatched to the area to search for the suspects.

Upon arrival in the area, Officer Barnum observed **M.A.S.** and a second black youth, **D.H.**, exit an apartment building near the intersection of the 1400 block of **Bever Avenue and Third Avenue**. One of the youths was wearing a white coat, and the other was wearing a black coat. Each was carrying a puppy. Officer Barnum hailed the youths who approached the squad car at the officer's request.

After a brief conversation, Officer Barnum opened the rear squad car door, and the boys took seats. A factual dispute exists as to the circumstances surrounding the youths' entry into the car. Officer Barnum testified he agreed to give the boys a ride

~~to the home of D.H.~~ because of their young age and the early morning hour. He denied he ~~ordered~~ or directed the boys to get in the car. M.A.S. testified, on the other hand, he asked Officer Barnum if he could first take the dog back inside the nearby apartment building, but the officer denied that request and directed him to get in the car. M.A.S., admits, however, upon entry of the vehicle, he believed Officer Barnum would take him to D.H.'s home. Once inside the car, the youths were unable to exit without assistance because the inside rear door handles had been disabled.

Officer Barnum then used the police radio to obtain confirmation of the descriptions of the clothing worn by the two suspects. Instead of taking the youths directly to the home of D.H., Officer Barnum drove to a nearby residence for the purpose of speaking to two witnesses who claimed to have observed two suspects running from the vicinity of the gunshots. When Officer Barnum arrived at the residence, a second officer, John Phipps ("Phipps") watched the youths in the squad car while Officer Barnum went inside to question the witnesses. One of the witnesses told Officer Barnum D.H. was one of the two black males seen running from the vicinity of the gunshots.

Officer ~~Barnum~~ returned to the squad car and, with the assistance of Phipps, removed ~~M.A.S. and D.H.~~ from the vehicle. Officer Barnum took D.H. to the rear of the vehicle to pat him down. Phipps took M.A.S. to the front of the car for the same purpose. Before the pat down could be undertaken, however, M.A.S. ran. Phipps

~~pursued him. As he attempted to flee, M.A.S. pulled a loaded semi-automatic handgun from his trousers, but dropped it when he fell to the ground.~~

M.A.S. was charged with carrying a weapon in violation of Iowa Code section 724.4(1) (1997). M.A.S. filed a motion to suppress the weapon. The district court overruled the motion and found M.A.S. guilty of the offense. M.A.S. appeals, claiming Officer Barnum arrested him without probable cause and transported him to the scene of the crime without his consent.

II. Standard of Review. In delinquency cases, constitutional issues are reviewed de novo. *In re S.A.W.*, 499 N.W.2d 739, 740 (Iowa App. 1993). We make an independent evaluation of the totality of the circumstances as shown by the entire record. *State v. Breuer*, 577 N.W.2d 41, 44 (Iowa 1998). This court gives considerable deference to findings of fact concerning credibility of witnesses, given the trial court's ability to observe witnesses and gauge their credibility during testimony. *State v. Hatter*, 342 N. W.2d 851, 854 (Iowa 1983).

III. Legality of the Arrest. We assume, without deciding, Officer Barnum arrested M.A.S. when he directed him to get in the back seat of the squad car. Officer Barnum ~~had no~~ probable cause to make that arrest and it was invalid. However, the ~~ruling of the district court on the admissibility of evidence will be upheld on any ground appearing in the record.~~ *State v. Most*, 578 N.W.2d 250, 253 (Iowa App. 1998). Police officers may briefly detain a person for investigatory purposes if there are specific and articulable facts to support a reasonable belief criminal activity may

~~be afoot.~~ *Terry v. Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906-07 (1968); *State v. Edgerly*, 571 N.W.2d 25, 27 (Iowa App. 1997). After learning D.H., the companion of M.A.S., was one of the suspects seen fleeing from the scene of the gunshots, Officer Barnum had specific and articulable cause to frisk both D.H. and M.A.S. See *State v. Scott*, 405 N.W.2d 829, 832 (Iowa 1987).

When M.A.S. attempted to flee to avoid being frisked, his resistance provided an independent ground for arrest. See *State v. Dawdy*, 533 N.W.2d 551, 555 (Iowa 1995). The gun was therefore legally seized as a consequence of the second, legitimate arrest. *Id.* (citing *United States v. Bailey*, 691 F.2d 1009, 1016-18 (11th Cir. 1982)); *United States v. Dawdy*, 46 F.3d 1427, 1430-31 (8th Cir. 1995). Accordingly, the motion to suppress was without merit, and the delinquency adjudication was correctly entered.

AFFIRMED.

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