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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1572**

State of Minnesota,
Respondent,

vs.

Shelly Kay Karger,
Appellant.

**Filed September 25, 2017
Affirmed
Stauber, Judge***

Swift County District Court
File No. 76-CR-14-570

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

Danielle H. Olson, Swift County Attorney, Allison T. Whalen, Assistant County Attorney,
Benson, Minnesota (for respondent)

John D. Ellenbecker, St. Cloud, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Reilly, Judge; and Stauber
Judge.

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

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from her convictions for driving while impaired, appellant Shelly Kay Karger argues that the police officer unlawfully placed her under arrest. Because Karger was detained pursuant to an investigation and not under arrest, we affirm.

FACTS

In October 2014, the driver of a Pontiac Grand Prix rolled into a ditch along a highway in Swift County. A witness stopped, called police, and transported the driver—and the sole occupant—to a local bar, one mile away, where the driver waited for a ride. Approximately 20 minutes after the 911 call, police officer Justin Girard arrived at the bar. From police dispatch, Officer Girard knew that the driver was a female, appeared to be under the influence, had a cut on her hand, and was waiting for a ride. While speaking with Officer Girard, Karger denied that she was involved in the accident. The bartender explained, however, that the witness had dropped off Karger, that Karger was the only other person at the bar, and that Karger had admitted that she had been involved in a car accident. Returning to speak with Karger, Officer Girard observed that she appeared to be under the influence of alcohol. She had slurred speech, had bloodshot, watery eyes, and had poor balance. She also had a cut on her hand. Girard asked Karger to accompany him to the accident site and get her car. Girard neither placed Karger in handcuffs nor said that she was under arrest.

At the scene, Officer Girard learned that the Pontiac was registered to Karger under her previous name. Karger agreed to perform field sobriety tests and failed. On a

preliminary breath test, her breath sample registered an alcohol concentration of 0.19. After being placed under arrest and transported to jail, Karger agreed to a blood alcohol test, which showed an alcohol concentration of 0.263. Karger waived her *Miranda* rights and admitted to drinking and driving the Pontiac.

Karger was charged with Count I, driving with an alcohol concentration of 0.08 or more, Count II, driving while impaired, and Count III driving with an alcohol restriction on her license. Minn. Stat. §§ 169A.20, subd. 1(5), (1) (2014); 171.09, subd. 1(f)(1) (2014). Karger moved to suppress the evidence, arguing that Officer Giarard unlawfully arrested her without probable cause and that the implied-consent advisory was unconstitutional. After the district court denied her motion, Karger and the state agreed to a stipulated facts trial under Minnesota Rule of Criminal Procedure 26.01, subdivision 3. Karger waived her rights to testify, to require state witnesses to testify, to question those witnesses, and to present a defense.

The district court found Karger guilty of counts I and III and sentenced her to 365 days in jail, staying 305 days for two years. The district court ordered Karger to serve 60 days in jail in three 20-day segments with the last two deferred if she followed conditions of probation. Karger appeals.

D E C I S I O N

Karger argues that the district court erred by concluding that she was not under arrest when Officer Girard placed her in the squad car. Although she concedes that Officer Girard had reasonable suspicion to detain her as the suspected driver, Karger asserts that

placing her in the squad car and driving her to the accident scene transformed the investigative detention into a de facto arrest, for which probable cause was required.

Where the facts are undisputed, as here, we review the district court's pretrial denial of a motion to suppress de novo. *State v. Onyelobi*, 879 N.W.2d 334, 342-43 (Minn. 2016). But the district court's findings of fact are reviewed for clear error. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

Police may conduct a brief investigatory stop and detention if they have a reasonable and articulable suspicion that criminal activity is afoot. *State v. Timberlake*, 774 N.W.2d 390, 393 (Minn. 2008). Such an investigatory stop and detention may not continue indefinitely. *State v. Bell*, 557 N.W.2d 603, 606 (Minn. App. 1996), *review denied* (Minn. Mar. 18, 1997). A lawful stop and detention may transform into a de facto arrest, for which the higher standard of probable cause is required. *See State v. Moffatt*, 450 N.W.2d 116, 119 (Minn. 1990). The United States Supreme Court has acknowledged the difficulty in distinguishing "an investigatory stop from a *de facto* arrest." *United States v. Sharpe*, 470 U.S. 675, 685, 105 S. Ct. 1568, 1575 (1985). Accordingly, both the United States and Minnesota Supreme Courts have eschewed adoption of bright line-rules for the duration of investigative detentions. *Id.*; *Moffatt*, 450 N.W.2d at 119.

An investigatory detention does not exceed its constitutional authority if it is reasonably necessary to effectuate the purpose of the stop. *See State v. Blacksten*, 507 N.W.2d 842, 846 (Minn. 1993). In consideration of whether an investigatory stop has exceeded its limits relative to the reasonable suspicion standard, Minnesota courts have asked whether an interpretation of the circumstances would permit a reasonable person to

believe that she was under arrest and not free to leave. *See id.* Ultimately, the test is one of reasonableness, which requires balancing “the nature and degree of the intrusion on an individual’s Fourth Amendment rights against the government’s interest in crime prevention and legitimate concerns about the safety of law-enforcement officers.” *See State v. Balenger*, 667 N.W.2d 133, 139 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003).

The supreme court has explained that briefly handcuffing a suspect or placing him in the squad car while the investigation proceeds does not transform an investigative detention into an arrest. *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999). Similarly, in concluding that a reasonable person would not believe he was under arrest, the supreme court in *State v. VanWagner*, 504 N.W.2d 746, 749 (Minn. 1993), explained that the defendant was not handcuffed, no guns were drawn, there was no threatening conduct, and the questioning took place in broad daylight without coercion and to dispel or confirm police suspicions.

Karger argues that an objective reading of the facts compels a conclusion that she was under arrest, for which Officer Girard needed probable cause. To support her assertion, she points only to the fact that she was not permitted to leave with a third party, who had arrived to give her a ride. We disagree.

Here, the undisputed facts demonstrate that Officer Girard did not transform the investigative stop into an unlawful arrest by placing Karger in the squad car. Officer Girard knew that the driver of the rollover accident was dropped off at the bar. Karger was the only person at the bar, other than a bartender who confirmed that she was dropped off and

had admitted to being involved in a car accident. Knowing that the driver had a cut on her hand, Officer Girard independently observed the cut on Karger's hand. As Officer Girard explained at the pretrial hearing, he was still unsure whether Karger was in fact the driver but asked her to come to the accident scene, one mile away.

The record reflects that Karger was detained for fewer than fifteen minutes. *Cf. Moffatt*, 450 N.W.2d at 117 (upholding reasonableness of investigatory detention that lasted more than one hour). Girard did not place Karger under arrest during the investigation and he did not handcuff her. The brief detention allowed Officer Girard to continue his investigation of the rollover. In light of Karger's denial of involvement in the rollover against corroborating evidence suggesting otherwise, Officer Girard's investigatory detention was justified to freeze the situation. *Wold v. State*, 430 N.W.2d 171, 174 (Minn. 1988).

Affirmed.