STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1747

State of Minnesota,
Respondent,

vs.

Camille Elizabeth Jensen,
Appellant.

Filed August 7, 2017
Affirmed
Florey, Judge

Hennepin County District Court
File No. 27-CR-15-5682

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

Wynn C. Curtiss, Hopkins City Attorney, Chestnut Cambronne, P.A., Minneapolis, Minnesota (for respondent)

Robert M. Christensen, Robert M. Christensen, P.L.C., Minneapolis, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Kirk, Judge; and Florey, Judge.

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

FLOREY, Judge

Appellant challenges her convictions of two counts of second-degree driving while under the influence (DWI), arguing that the police officer who approached her stopped

vehicle violated her Fourth Amendment rights by asking her for identification. Because the limited intrusion was warranted under the totality of circumstances, we affirm.

FACTS

On February 21, 2015, at approximately 1:41 a.m., Hopkins police officer Alexander Cady saw a car stopped in the middle of an intersection. Both of the car's front doors were open, and he observed the driver, Camille Elizabeth Jensen, kneeling over her friend, who was lying on the ground. Officer Cady radioed for medical assistance and requested an additional officer at the scene. As Officer Cady left his squad car and approached the stopped car, he observed Jensen helping her friend into the passenger seat, saw vomit on the ground, and heard one of the two say, "F—k, is that the cops?"

Jensen stated that the friend had had too much to drink and that she was giving her a ride home. Officer Cady asked both occupants for identification and whether they needed an ambulance. During Jensen's reply, Officer Cady detected indicia of intoxication on her, including "a strong odor of an alcoholic beverage coming from her facial region, . . . watery eyes, . . . and slurring [of] her words."

After Jensen failed field sobriety tests and a preliminary breath test, she was arrested on suspicion of DWI. Jensen later consented to take a breath test, which indicated an alcohol concentration of .20. She was charged with two counts of second-degree DWI. Jensen moved to suppress the evidence "obtained as a result of identification procedures used during the investigation," alleging a violation of her Fourth Amendment rights.

The district court denied the motion following a hearing, determining that Jensen was not improperly seized because her act of parking in the middle of an intersection was

sufficient to justify an investigatory stop. The court further ruled that the car's location, coupled with Jensen's presence with a drunk friend at that time of the morning and Officer Cady's overhearing the statement of "F—k, is that the cops?" also provided Officer Cady with reasonable suspicion that Jensen was engaged in criminal activity. Consistent with Minn. R. Crim. P. 26.01, subd. 4, Jensen agreed to a stipulated-facts trial in order to obtain appellate review of the pretrial ruling. She was found guilty on both counts, and this appeal followed.

D E C I S I O N

"When reviewing pretrial orders on motions to suppress evidence, we 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 correct approach in a case where the facts are not significantly in dispute is to simply analyze the testimony of the officers and determine if, as a matter of law, the officers were justified under the cases in doing what they did." *State v. Storvick*, 428 N.W.2d 55, 58 n.1 (Minn. 1988).

The Fourth Amendment to the United States Constitution and article I, section 10 of the Minnesota Constitution prohibit unreasonable searches and seizures of citizens. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. But "[n]ot all encounters between the police and citizens constitute seizures." *Harris*, 590 N.W.2d at 98.

> Persons found under suspicious circumstances are not clothed with a right of privacy which prevents law-enforcement officers from inquiring as to their identity and actions. The essential needs of public safety permit police officers to use their faculties of observation and to act thereon within proper

> limits. It is not only the right but the duty of police officers to investigate suspicious behavior, both to prevent crime and to apprehend offenders.

State v. Hollins, 789 N.W.2d 244, 249 (Minn. App. 2010) (quotation omitted), *review denied* (Minn. Dec. 22, 2010). A seizure is accomplished when the liberty of a person is restrained due to a show of police authority or use of physical force. *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S. Ct. 1868, 1879 n. 16 (1968). Whether a person has been seized is judged by the totality of circumstances. *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995) (stating that "a person has been seized if in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter").

"[U]nder the totality of the circumstances test, the more intrusive a request for identification is the more likely that it will be considered an investigative stop and, thus, a seizure." *State v. Pfannenstein*, 525 N.W.2d 587, 589 (Minn. App. 1994). Mere questioning by a police officer at a parked car does not constitute a seizure. *Harris*, 590 N.W.2d at 98; (quotation omitted), *review denied* (Minn. Mar. 14, 1995). But if a police officer "requests identification and asks the driver to leave a vehicle, the officer must" have "specific and articulable facts which, together with reasonable inferences from those facts, reasonably warrant the intrusion." *LaBeau v. Comm'r of Pub. Safety*, 412 N.W.2d 777, 779 (Minn. App. 1987); *see Cobb v. Comm'r of Pub. Safety*, 410 N.W.2d 902, 903 (Minn. App. 1987) (stating that "police need a particularized and objective basis for the minimal intrusion occasioned by asking the driver to identify himself"). When an armed officer in uniform summons a driver to a squad car to be questioned and to provide identification

without any suggestion of unlawful or suspicious activity on the part of the driver, the seizure violates the Fourth Amendment. *State v. Day*, 461 N.W.2d 404, 407 (Minn. App. 1990), *review denied* (Minn. Dec. 20, 1990).

Jensen argues that Officer Cady "demanded Ms. Jensen's identification when he had no reasonable basis to suspect that she was engaged in criminal activity." We disagree. Unlike in *Day*, where nothing in the police encounter suggested that the defendant had engaged in unlawful conduct, *id.*, the totality of circumstances here supported a reasonable basis for Officer Cady to suspect criminal activity. When Officer Cady encountered Jensen's vehicle at 1:41 a.m., it was parked in the middle of an intersection, and both occupants had left the vehicle. The passenger was admittedly intoxicated, had vomited, and needed a ride home. One of the two vehicle occupants uttered an expression of dismay at the presence of police. From these facts, Officer Cady could reasonably suspect the following criminal activity to support his asking Jensen for identification: (1) Jensen may have violated the law by parking her car in the middle of an intersection; (2) the time of night, the choice of location to stop a vehicle, the admitted inebriation of the passenger, and the expletive-filled expression of dismay at realizing they had been noticed by police suggested that Jensen could be under the influence; and (3) the expression of dismay, alone, was suggestive of some sort of nefarious conduct. *Cf. State v. French*, 400 N.W.2d 111, 116 (Minn. App. 1987) (stating that "evidence of flight suggests consciousness of guilt"), *review denied* (Minn. Jan. 27, 1987). Based on the totality of these circumstances, we conclude that the district court did not err by denying Jensen's motion to suppress the evidence obtained after she was asked for identification. *See Pfannenstein*, 525 N.W.2d at

589 (upholding officer's single request for identification, unaccompanied by any other show of police force, upon encountering a disabled vehicle).

Affirmed.