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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0034**

Paul Robert Mix, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent

**Filed June 19, 2017
Affirmed
Worke, Judge**

Washington County District Court
File No. 82-CV-16-3731

Charles L. Hawkins, Arthur J. Waldon, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Joan M. Eichhorst, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Worke, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's order sustaining the revocation of his driver's license and impoundment of his license plates, arguing that the officer lacked a specific, articulable suspicion to justify the stop. We affirm.

FACTS

On July 23, 2016, heavy rain caused a power outage at a busy intersection that rendered the semaphores nonfunctioning. Police officers, including Sergeant Alanna Kopel, were stationed at the intersection to control traffic. Around 6:28 p.m., a vehicle pulled up to Sergeant Kopel and the driver indicated that a “motorcycle had crashed just south” of her location. Sergeant Kopel did not ask the driver’s name.

Sergeant Kopel drove approximately two blocks to the incident location. Sergeant Kopel observed an SUV on the side of the road with its hazard lights flashing and a woman standing on the side of the road next to an upright motorcycle. Sergeant Kopel did not see any other evidence of a crash involving a motorcycle. Sergeant Kopel asked the woman next to the motorcycle, who was later identified, if she was okay, and the woman stated that she was. Sergeant Kopel asked where the driver of the motorcycle was, and the woman pointed in the direction of a man walking away. Sergeant Kopel did not ask the woman if that particular man was the driver of the motorcycle, but she assumed that he was because she did not see anyone else in the area.

Sergeant Kopel drove her marked squad car to the man who was walking. Sergeant Kopel had her vehicle’s emergency lights engaged because she was concerned about possible injuries sustained as a result of a motorcycle crash. Sergeant Kopel exited her vehicle, asked the man to stop, and asked him if he was okay and if he needed an ambulance. The man replied that he was fine. Sergeant Kopel asked for the man’s driver’s license, which identified him as appellant Paul Robert Mix. Mix had fresh injuries to his right arm, and his shirt was torn. Mix was wearing safety glasses that had abrasions. Mix’s

clothes were wet, his eyes were glassy and red when he removed his glasses, he was unsteady on his feet, and he slurred his speech and emitted a strong odor of alcohol when he spoke.

Sergeant Kopel asked Mix about the crash. Mix denied driving and told Sergeant Kopel that he did not know what she was talking about. Sergeant Kopel asked Mix what street he lived on and he could not tell her the name of the street. Sergeant Kopel asked Mix where he was coming from and he avoided the question. Mix again told Sergeant Kopel that he did not know about a crash and started walking away. Sergeant Kopel believed that Mix was impaired and placed him under arrest for driving while impaired (DWI). Mix refused to submit to the breath test offered to him.

At an implied-consent hearing, Mix challenged the basis for the stop and legality of the seizure. The district court sustained the revocation of Mix's driver's license and impoundment of his license plates. This appeal followed.

D E C I S I O N

This court reviews the district court's findings supporting an order sustaining a license revocation for clear error. *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). "Findings of fact are clearly erroneous if, on the entire evidence, [the reviewing 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). "[We] defer to the district court's credibility determinations and ability to weigh the evidence." *Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 523 (Minn. App. 2013). We review de novo questions of law in

implied-consent proceedings. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010).

Mix argues that Sergeant Kopel lacked specific, articulable facts upon which to seize him.¹ When the facts are not significantly in dispute, this court determines as a matter of law “whether the officer’s actions amounted to a seizure and if the officer had an adequate basis for the seizure.” *State v. Day*, 461 N.W.2d 404, 406 (Minn. App. 1990), *review denied* (Minn. Dec. 20, 1990).

Mix argues that he was seized when Sergeant Kopel approached him and directed him to stop. But not all contacts between police and a citizen constitute a seizure. *In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993). An officer does not seize an individual when she simply talks to that person standing in a public place. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980). In some situations, police officers need to ask questions to sort out a situation to determine if anyone should be arrested. *State v. Walsh*, 495 N.W.2d 602, 604-05 (Minn. 1993) (stating that “on-the-scene” questioning, in which an officer is simply trying to sort out a situation, is not an in-custody situation).

A seizure occurs when a reasonable person, in view of all the circumstances surrounding the incident, “would have believed that because of the conduct of the police

¹ The record shows that Mix was not the driver of the motorcycle. If an individual whose license has been revoked claims that he was not driving, the commissioner must prove that he was driving by a preponderance of the evidence. *Llona v. Comm'r of Pub. Safety*, 389 N.W.2d 210, 212 (Minn. App. 1986). But only individuals who take and fail a chemical test may raise this issue. *Flamang v. Comm'r of Pub. Safety*, 516 N.W.2d 577, 580 (Minn. App. 1994), *review denied* (Minn. July 27, 1994). Because Mix refused testing, whether he was driving is irrelevant. *See id.*

he was not free to leave.” *E.D.J.*, 502 N.W.2d at 783; *see State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995) (stating that a seizure occurs when the circumstances show that a reasonable person would have believed that he was neither free to disregard the police questions nor free to end the encounter); *State v. Hanson*, 504 N.W.2d 219, 220 (Minn. 1993) (“[T]he question to be asked by the reviewing court is whether, looking at all of the facts, the conduct of the police would communicate to a reasonable person in the defendant’s physical circumstances an attempt by the police to capture or seize or otherwise to significantly intrude on the person’s freedom of movement.”). Situations in which a reasonable person would not feel free to leave may include “the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” *State v. Pfannenstein*, 525 N.W.2d 587, 588 (Minn. App. 1994) (quotation omitted), *review denied* (Minn. Mar. 14, 1995).

In *Hanson*, the supreme court stated that a seizure does not necessarily occur when an officer turns on the squad car’s emergency lights before approaching an already stopped car on the shoulder of the road. 504 N.W.2d at 220. The court stated that the officer’s conduct would not have communicated to a reasonable person that the officer was attempting to seize the person. *Id.* Rather, “[a] reasonable person would have assumed that the officer was not doing anything other than checking to see what was going on and to offer help if needed.” *Id.*

Here, Sergeant Kopel drove her marked squad car with the emergency lights activated to Mix, whom the woman at the scene had pointed toward when Sergeant Kopel

asked the location of the driver. She exited her vehicle and asked Mix to stop. Sergeant Kopel asked Mix if he was okay, and he replied that he was fine. Sergeant Kopel asked Mix to produce his driver's license. Mix had fresh injuries to his arm, a torn shirt, and abrasions to his safety glasses. Mix's clothes were wet, he was unsteady on his feet, he slurred his words and smelled of alcohol when he spoke, and when he removed his glasses his eyes were glassy and red. Sergeant Kopel asked Mix what street he lived on and he could not tell her the name of the street. Sergeant Kopel asked Mix where he was coming from and he avoided the question. Mix told Sergeant Kopel that he did not know about a crash and started walking away from her.

The circumstances do not show “the threatening presence of several officers”; there was one officer who testified at the implied-consent hearing that she did not ask Mix to perform field sobriety tests because she did not believe that it was safe because she was alone, he attempted to walk away from her, he was under the influence of alcohol, and because of his physical size compared to her size. *See Pfannenstein*, 525 N.W.2d at 588. Sergeant Kopel did not display a weapon, and there is no evidence that she physically touched Mix, or used “language or tone of voice indicating that compliance with [her] request might be compelled.” *See id.* Additionally, Mix attempted to walk away from Sergeant Kopel. *See E.D.J.*, 502 N.W.2d at 783 (stating that a seizure occurs when a reasonable person would feel he was not free to leave). The circumstances are more akin to *Hanson*, because Sergeant Kopel approaching Mix would have communicated to Mix that she was “checking to see what was going on and to offer help if needed.” *See* 504 N.W.2d at 220. We conclude that Sergeant Kopel did not seize Mix when she approached

him and asked him to stop. Rather, the seizure occurred after questioning led Sergeant Kopel to believe that Mix had consumed alcohol and drove a motorcycle.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Subject to limited exceptions, warrantless searches are per se unreasonable. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967). An investigatory stop is one exception to the warrant requirement. *Diede*, 795 N.W.2d at 842 (citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968)).

An officer may conduct “a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675 (2000) (citing *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884). Reasonable suspicion must be based on specific facts that permit the officer to articulate a “particularized and objective basis for suspecting the seized person of criminal activity.” *Cripps*, 533 N.W.2d at 391.

The reasonable, articulable suspicion standard is “not high.” *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quotation omitted); *Magnuson v. Comm’r of Pub. Safety*, 703 N.W.2d 557, 560 (Minn. App. 2005) (stating that the factual basis required to justify an investigatory stop is minimal). An investigatory stop is justified if it “was not the product of mere whim, caprice or idle curiosity, but was based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004) (quotations omitted). Appellate courts will consider the totality of the circumstances, recognizing that the “special training of police officers may lead them to arrive at inferences and deductions

that might well elude an untrained person.” *State v. Askerooth*, 681 N.W.2d 353, 369 (Minn. 2004) (quotations omitted).

An investigatory stop “need not arise from the personal observations of the police officer but may be derived from information acquired from another person.” *Magnuson*, 703 N.W.2d at 560. An informant’s tip may justify an investigatory stop if it has “sufficient indicia of reliability.” *Id.* “Identified citizen informants are presumed to be reliable,” *id.*, and officers may rely on an informant if he or she “provides sufficient [identifying] information so that he [or she] may be located and held accountable for providing false information.” *Playle v. Comm’r of Pub. Safety*, 439 N.W.2d 747, 748 (Minn. App. 1989). An eyewitness observation “lends significant support to the tip’s reliability,” even if the informant is anonymous. *Navarette v. California*, 134 S. Ct. 1683, 1688-89 (2014).

The following facts allowed Sergeant Kopel to form a reasonable, articulable suspicion that Mix was involved in criminal activity: (1) the weather conditions; (2) the report of a motorcycle crash; (3) an SUV parked on the side of the road in the area of the reported motorcycle crash with its hazard lights engaged; (4) a motorcycle on the side of the road; (5) a woman standing next to the motorcycle, responding to the officer’s question of whether she was okay and not denying that a motorcycle crash occurred; (6) the woman pointing in Mix’s direction when asked the location of the driver of the motorcycle; (7) Mix walking away from the motorcycle; (8) Mix being the only individual walking from the area; (9) Mix responding to the officer’s question whether he was okay; (10) Mix’s arm injury and torn shirt; (11) Mix wearing safety glasses that a motorcyclist wears that

appeared to have abrasions; and (12) Mix being unsteady, slurring, smelling of alcohol, and having glassy red eyes.

Mix asserts that the only information that Sergeant Kopel possessed at the time he was seized was provided by unidentified informants. But the motorist's report was not necessarily of criminal activity, but more likely made to assist a potentially injured motorcyclist. And while the report was from an unidentified individual, the motorist likely observed the incident. *See id.* (stating that an eyewitness observation "lends significant support to the tip's reliability," even if the informant is anonymous). Mix conceded at oral argument that Sergeant Kopel was justified in using the information from the motorist to go to the location. Additionally, the woman standing next to the motorcycle was identified and can be located and held accountable for providing false information. *See Playle*, 439 N.W.2d at 748. Moreover, at the time of the seizure, Sergeant Kopel had made her own personal observations. Based on all of the circumstances, Sergeant Kopel seized Mix after observing clues that he may have been involved in a motorcycle crash and indicia of intoxication. Sergeant Kopel formed a reasonable, articulable suspicion of criminal activity to conduct a brief investigatory stop. Accordingly, the district court did not err in sustaining the revocation of Mix's driver's license and impoundment of his license plates.

Affirmed.