STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1684

State of Minnesota,
Respondent,

vs.

Benji Kenneth Woehle,
Appellant.

Filed August 27, 2018
Affirmed
Johnson, Judge

Beltrami County District Court
File No. 04-CR-16-3445

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

David Hanson, Beltrami County Attorney, Ashley A. Nelson, Assistant County Attorney, Bemidji, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Stauber, Judge.*

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

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

JOHNSON, Judge

The district court found Benji Kenneth Woehle guilty of second-degree driving while impaired. Woehle's conviction is based on evidence that he was asleep in the driver's seat of his pickup truck while it was parked on the side of a rural road with its headlights on and its engine running. Woehle challenges the district court's denial of his pre-trial motion to suppress evidence. We conclude that a deputy sheriff did not seize Woehle merely by parking his squad car behind Woehle's truck on the side of the road and activating his rear emergency lights. Therefore, we affirm.

FACTS

On October 21, 2016, at 9:26 p.m., the Beltrami County Sheriff's Office received an anonymous report of a suspicious vehicle parked near a pipeline crossing on Sundown Road. Deputy Rockensock drove to that location and observed a pickup truck stopped along the right side of the road with its headlights on and its engine running. Deputy Rockensock parked his squad car behind the truck, activated the squad car's rear emergency lights, and approached the driver's side of the truck. Deputy Rockensock saw a man, later identified as Woehle, asleep in the driver's seat with his head leaning against the side window. The deputy knocked on the truck's window, waited a few seconds, and then opened the driver's door. Deputy Rockensock asked Woehle several questions and observed that he slurred his speech and that he seemed drowsy and disoriented.

Deputy Bender also drove to the scene. He parked his squad car behind Deputy Rockensock's squad car and approached the passenger's side of the truck. As Deputy

Rockensock spoke to Woehle, Deputy Bender saw Woehle make "frequent, awkward body movements." Neither deputy detected an odor of alcohol, but each suspected that Woehle was impaired by a controlled substance. Deputy Rockensock directed Woehle to exit the truck. The deputies administered field sobriety tests, which Woehle was unable to complete satisfactorily. The deputies arrested Woehle for driving while impaired and transported him to a hospital. A search warrant was obtained, and a sample of Woehle's blood was collected. Chemical testing indicated that Woehle was under the influence of methamphetamine.

The state charged Woehle with second-degree driving while impaired, a gross misdemeanor, in violation of Minn. Stat. § 169A.25, subd. 1(a) (2016). In February 2017, Woehle moved to suppress evidence on the ground that Deputy Rockensock "unlawfully expanded the duration and scope of the stop because he lacked reasonable, articulable suspicion of additional illegal activity." The district court conducted an evidentiary hearing in March 2017. The state introduced the testimony of the two deputies who encountered Woehle at the scene of his arrest. Woehle did not offer any evidence. The district court denied Woehle's motion, reasoning that Deputy Rockensock did not seize Woehle when the deputy approached Woehle's truck to check on his welfare. The district court reasoned that the deputy seized Woehle later, after perceiving signs of impairment, which provided the deputy with a reasonable, articulable suspicion of criminal activity.

In April 2017, the parties agreed to a stipulated-evidence court trial and agreed that Woehle could challenge the district court's suppression ruling on appeal. *See* Minn. R.

Crim. P. 26.01, subd. 4 (2017). The district court found Woehle guilty and sentenced him to one year in jail, with all but 90 days stayed. Woehle appeals.

D E C I S I O N

Woehle argues that the district court erred by denying his motion to suppress evidence. Specifically, Woehle argues that Deputy Rockensock unlawfully seized him when the deputy parked his squad car behind Woehle's truck and activated the squad car's rear emergency lights, without a reasonable, articulable suspicion of criminal activity.

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. A substantially similar provision is contained in the Minnesota Constitution. *See* Minn. Const. art. I, § 10. As a general rule, a law enforcement officer may not seize a person in a motor vehicle without probable cause. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). But a law enforcement officer may conduct a brief investigatory detention of a person in a motor vehicle if the officer has a reasonable, articulable suspicion that the person is engaged in criminal activity. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968)). A reasonable, articulable suspicion exists if "the police officer [is] able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880. Reasonable suspicion requires "something more than an unarticulated hunch"; "the officer must be able to point to something that objectively supports the suspicion at issue." *State*

v. Davis, 732 N.W.2d 173, 182 (Minn. 2007) (quotation omitted); *see also Terry*, 392 U.S. at 21-22, 88 S. Ct. at 1880.

It is undisputed that Deputy Rockensock seized Woehle at some point in time. To resolve Woehle's appeal, we must determine whether Deputy Rockensock seized Woehle when the deputy parked his squad car behind Woehle's truck and activated his rear emergency lights, as Woehle argues. "Not all encounters between the police and citizens constitute seizures." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). An officer does not necessarily effect a seizure merely by approaching a person who is standing in a public place and asking the person a few questions. *In re Welfare of E.D.J.*, 502 N.W.2d 779, 782 (Minn. 1993); *State v. Houston*, 654 N.W.2d 727, 732 (Minn. App. 2003), *review denied* (Minn. Mar. 26, 2003). Similarly, an officer does not necessarily effect a seizure merely by approaching and speaking with a person who is inside a parked vehicle. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980); *State v. Klamar*, 823 N.W.2d 687, 692 (Minn. App. 2012). Indeed, an officer is justified in checking on the welfare of a person inside a parked vehicle if the circumstances give the officer a reason to believe that something is amiss. *See Klamar*, 823 N.W.2d at 692-94; *State v. Lopez*, 698 N.W.2d 18, 23 (Minn. App. 2005); *Kozak v. Commissioner of Pub. Safety*, 359 N.W.2d 625, 628 (Minn. App. 1984).

Under Minnesota law, a person is seized only if, "in view of all 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." *Harris*, 590 N.W.2d at 98. Circumstances that might indicate a seizure include the threatening

presence of several officers, an officer's display of a weapon, an officer's physical touching of the person, or an officer's use of language or tone of voice indicating that compliance is compelled. *E.D.J.*, 502 N.W.2d at 781 (citing *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877 (1980)).[1] In the absence of some affirmative display of authority, "otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." *Id.* (quoting *Mendenhall*, 446 U.S. at 555, 100 S. Ct. at 1877). This court applies a *de novo* standard of review to the questions of whether and when a seizure occurred if the underlying facts are undisputed. *Harris*, 590 N.W.2d at 98. This court applies a clear-error standard of review to a district court's findings of fact concerning an alleged seizure. *Diede*, 795 N.W.2d at 843.

In this case, the district court found that Deputy Rockensock did not seize Woehle when the deputy parked his squad car behind Woehle's truck and activated the squad car's rear emergency lights. Rather, the district court found that the deputy merely conducted a welfare check, which does not amount to a seizure. Woehle contends that, "contrary to the district court's conclusion, Deputy Rockensock seized" him the moment the deputy "parked right behind appellant's truck and turned on his emergency lights." Woehle

[1]The United States Supreme Court modified the *Mendenhall* test in *California v. Hodari D.*, 499 U.S. 621, 111 S. Ct. 1547 (1991), in which it held that a seizure occurs "only when police use physical force to restrain a person or, absent that, when a person physically submits to a show of authority by the police." *E.D.J.*, 502 N.W.2d at 780; *see also Hodari D.*, 499 U.S. at 626-29, 111 S. Ct. at 1550-52. The Minnesota Supreme Court has held that *Hodari D.* does not apply to article I, section 10, of the Minnesota Constitution. *E.D.J.*, 502 N.W.2d at 783. Woehle has invoked both his federal and his state constitutional rights. To the extent that we look to federal caselaw to guide our analysis of state constitutional law, we look only to the pre-*Hodari D.* caselaw.

elaborates by contending, "The flashing lights and manner of parking the squad car to partially block appellant's ability to drive backward amounted to a show of authority that would cause any reasonable person in appellant's situation to feel as if he could not leave."

Woehle's argument fails for at least three reasons. First, Woehle was asleep when he supposedly was seized by Deputy Rockensock. A person is seized if, "in view of all 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." *Harris*, 590 N.W.2d at 98. If a person is asleep, he or she cannot perceive the circumstances that might indicate an arrest and, thus, cannot possibly "believe[] that he or she was neither free to disregard the police questions nor free to terminate the encounter." *See id.* Woehle has not cited any caselaw for the proposition that a person can be seized while asleep and unaware of the presence of a law-enforcement officer, and we are not aware of any such caselaw.

Second, Deputy Rockensock's squad car did not completely block Woehle's truck and prevent him from driving away. In *State v. Sanger*, 420 N.W.2d 241 (Minn. App. 1988), this court concluded that a police officer seized a person by using his squad car to completely prevent any movement by a car that was parked alongside a curb behind another parked car, activating his flashing red lights, and honking his horn. *Id.* at 242-43. In this case, however, Deputy Rockensock parked his squad car immediately behind Woehle's truck, and Deputy Bender parked his squad car behind Deputy Rockensock's, but there was nothing in front of Woehle's truck. Neither squad car prevented Woehle from driving forward. In this way, this case is similar to *Illi v. Commissioner of Public Safety*, 873

N.W.2d 149 (Minn. App. 2015), in which a police officer stopped his squad car behind a parked car but did not "prevent" the driver of the parked car "from pulling away" in a forward direction. *Id.* at 152. We reasoned that "blocking in a car so as to execute a seizure occurs only when the officer actually positions his squad car so as to prevent the other vehicle from leaving." *Id.*

Woehle contends that he was seized in the same manner as the driver in *Lopez*. In that case, this court concluded that a police officer seized a person who had been sleeping in the driver's seat of a parked car, but not merely because the officer partially restricted the parked car's potential movement by positioning his squad car in front of the parked car. 698 N.W.2d at 21-22. Rather, this court concluded that a seizure occurred because the officer also activated his emergency lights, approached the driver's door, woke the sleeping person by knocking on the window five or six times, and then opened the car door. *Id.* *Lopez* provides no support for Woehle's argument that he was seized the moment Deputy Rockensock parked his squad car behind Woehle's truck and activated his rear emergency lights.

Third, Deputy Rockensock's activation of his rear emergency lights does not, as a matter of law, give a reasonable person a basis to believe that he or she has been seized. This principle is clearly stated in the supreme court's opinion in *State v. Hanson*, 504 N.W.2d 219 (Minn. 1993) (*Hanson II*). In that case, a deputy sheriff saw a stopped car on the shoulder of a highway, stopped his squad car behind it, and activated his flashing red lights. *State v. Hanson*, 501 N.W.2d 677, 678 (Minn. App. 1993) (*Hanson I*), *rev'd*, 504 N.W.2d 219 (Minn. 1993). This court concluded that the driver of the stopped car had

been seized, reasoning that "based upon the flashing red lights alone, a reasonable person would not feel free to leave." *Id.* at 680. The supreme court summarily reversed this court, stating that the use of flashing red lights does not necessarily indicate an arrest and, in that particular case, "would not have communicated to a reasonable person in these physical circumstances that the officer was attempting to seize the person." *Hanson II*, 504 N.W.2d at 220. The supreme court explained further as follows:

> 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. A reasonable person in such a situation would not be surprised at the use of the flashing lights. It was dark out and the cars were on the shoulder of the highway far from any town. A reasonable person would know that while flashing lights may be used as a show of authority, they also serve other purposes, including warning oncoming motorists in such a situation to be careful.

Id. For the same reasons, Woehle was not seized merely because Deputy Rockensock activated his rear emergency lights.[2]

Thus, we conclude that the district court did not err by finding that Woehle was not seized when Deputy Rockensock parked his squad car behind Woehle's truck and activated his rear emergency lights.

Woehle argues in the alternative that, if this court is unable to determine whether a seizure occurred when Deputy Rockensock parked his squad car behind Woehle's truck

[2]We note that the evidentiary record is unclear as to whether Deputy Rockensock's rear emergency lights would have been visible to a person in front of the squad car. *See Hoekstra v. Commissioner of Pub. Safety*, 839 N.W.2d 536, 537 (Minn. App. 2013) (noting that officer "activated his rear emergency lights" after stopping behind truck stopped on shoulder of highway, "believing that the truck's driver could not see them"). In any event, our analysis does not depend on that particular fact.

and activated his rear emergency lights, we should remand the matter to the district court to allow Woehle to present additional evidence. Woehle's alternative argument is based in part on his contention that the district court unfairly limited his ability to introduce relevant evidence at the evidentiary hearing. A remand is unnecessary because Woehle, having been asleep at all relevant times, would not be a competent witness and because the district court did not exclude any other pertinent evidence.

In sum, the district court did not err by denying Woehle's motion to suppress.

Affirmed.