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**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A17-1982**

State of Minnesota,
Respondent,

vs.

Gary Walter Granger,
Appellant.

**Filed December 24, 2018**
**Affirmed**
**Hooten, Judge**

Dakota County District Court
File No. 19HA-CR-16-1783

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

James C. Backstrom, Dakota County Attorney, Evan W. Frazier, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Ryan M. Schultz, Special Assistant Public Defender, Robins Kaplan, LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

## UNPUBLISHED OPINION

**HOOTEN**, Judge

In this appeal from convictions for receiving stolen property, possession of burglary or theft tools, and fifth-degree controlled substance crime, appellant argues that he was seized without reasonable suspicion when a police officer requested his identification as he sat in a parked car. We affirm.

## FACTS

At approximately 12:14 a.m. on December 9, 2015, Officer Sannes, as part of his routine duties, was conducting license-plate checks of parked cars in a hotel parking lot in Eagan. Officer Sannes later testified that he had previous experience in that parking lot "[f]inding vehicles with registered owners who have warrants or order for protections" and checking "the registry to make sure they're in the hotel to see if they're violating an order for protection or have unoccupied stolen vehicles in that parking lot." As he was reviewing the license plate of a car parked with its engine off approximately two car lengths away from his squad car, Officer Sannes discovered that the car was registered to a female owner who had an active warrant for her arrest.

Officer Sannes approached the car and saw appellant Gary Walter Granger, who is obviously male, sitting in the driver's seat with another man in the passenger seat. On that night, he was dressed in his police uniform and carrying a firearm. Officer Sannes asked appellant "about the registered owner of the vehicle" and "his association with the registered owner." Appellant responded that he had just purchased the vehicle from the registered owner and that she had been recently arrested. Appellant indicated that he and

his passenger were sitting in the car while contemplating whether they should get a room at the hotel. At some point during this short exchange with appellant, Officer Sannes asked appellant for his identification. Also, during this exchange, Officer Sannes noticed a catalytic converter in plain view sitting on the back seat of the vehicle.

Subsequent to this conversation and the request for identification, Officer Sannes determined that the driver's licenses of both the driver and the passenger had been suspended or cancelled, and upon further questioning, neither of the two was able to explain how they obtained the catalytic converter. Other officers were called to the scene and one of the officers observed in plain view a cordless, battery-operated Sawzall, wire cutters, and red paint shavings on the passenger. Upon a search of the vehicle, officers discovered drugs, paraphernalia, and burglary tools. It was later reported that the catalytic converter found in appellant's possession was stolen.

Appellant was arrested and charged with receiving stolen property, possession of burglary or theft tools, and fifth-degree controlled substance crime (possession). Appellant filed a motion to suppress the evidence discovered in his possession on the grounds that Officer Sannes seized him without reasonable suspicion. At the omnibus hearing, in an attempt to narrow the issue before the district court, appellant and the state agreed that appellant was seized during what appellant's attorney described as a "three-minute window of time" at the point where the officer "asks for the identification." The single issue presented to the district court was whether Officer Sannes's request for identification was supported by particularized, reasonable, and articulable suspicion. Without mentioning the agreement regarding the moment of seizure, the district court concluded that "[a] seizure

does occur when an officer, lacking reasonable, articulable, suspicion that a person was engaging in criminal activity, asks for identification." The district court concluded that Officer Sannes had a reasonable, articulable suspicion that a person was engaging in criminal activity when he approached the parked car and requested appellant's identification. Following the denial of his motion to suppress, appellant agreed to a stipulated-facts court trial under Minn. R. Crim. P. 26.01, subd. 3, and was convicted of all charges. This appeal follows.

## **D E C I S I O N**

The United States and Minnesota constitutions protect all individuals from "unreasonable searches and seizures" by the government. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. A seizure occurs when a police officer, by means of physical force or show of authority, restrains the liberty of a citizen in some manner that would cause a reasonable person to believe that he or she was not free to terminate the encounter. *In re E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993); *see also United States v. Mendenhall*, 446 U.S. 544, 552, 100 S. Ct. 1870, 1876 (1980); *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). Minnesota has adopted the totality of the circumstances standard developed by the United States Supreme Court in *Mendenhall* to determine whether a police encounter with a citizen constitutes a seizure. *Harris*, 590 N.W.2d at 98. Under the totality-of-the-circumstances standard, some of the circumstances that may be considered include the threatening presence of several police officers, the display of a weapon by an officer, physical touching of the citizen by an officer, and the use of language or tone of voice indicating that compliance with the officer's request might be compelled. *Mendenhall*, 446 U.S. at 554,

100 S. Ct. at 1877; *Harris*, 590 N.W.2d at 98. Other acts that may constitute evidence of physical force or authority include blocking a citizen's car or using flashing lights. *State v. Sanger*, 420 N.W.2d 241, 243 (Minn. App. 1988).

We will not reverse a district court's findings regarding whether a seizure took place unless the factual findings are clearly erroneous or contrary to law. *Overvig v. Comm'r of Pub. Safety*, 730 N.W.2d 789, 792 (Minn. App. 2007), *review denied* (Minn. Aug. 7, 2007). If the facts are not in dispute, a reviewing court must determine as a matter of law whether there was a seizure and whether the seizure was unreasonable. *Id.* Not all encounters between police officers and citizens constitute seizures. *Mendenhall*, 446 U.S. at 553–54, 100 S. Ct. at 1877; *Harris*, 590 N.W.2d at 98. A seizure does not result merely because a citizen feels some moral or instinctive pressure to cooperate because the other person involved in the encounter is a police officer. *Harris*, 590 N.W.2d at 98–99. In the absence of evidence indicating that the police officer restrained the citizen by means of physical force or authority, such an encounter, as a matter of law, does not constitute a seizure of that person. *Mendenhall*, 446 U.S. at 553–54, 100 S. Ct. at 1877; *Harris*, 590 N.W.2d at 98.

*Whether There Was a Seizure*

Appellant argues that he was seized at the point when Officer Sannes requested his identification. At the district court and on appeal, the state concedes appellant was seized at this point. Acknowledging that not every request for identification is a seizure, respondent appears to assert that it is bound by its stipulation about the moment of seizure at the district court.

But while the court is bound by parties' stipulations to the facts, stipulations of law are not binding on the court. *Hoene v. Jamieson*, 182 N.W.2d 834, 837–38 (Minn. 1970); *State v. Litzau*, 377 N.W.2d 53, 55 (Minn. App. 1985). "[L]egal determinations, such as whether there was a seizure and, if so, whether that seizure was unreasonable, are reviewed de novo." *State v. Eichers*, 853 N.W.2d 114, 118 (Minn. 2014). "[I]t is the responsibility of appellate courts to decide cases in accordance with law, and that responsibility is not to be 'diluted by counsel's oversights, lack of research, failure to specify issues or to cite relevant authorities.'" *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990). Therefore, neither the district court nor this court is bound by the agreement between the state and appellant that a seizure took place when Officer Sannes requested identification from appellant.

It is well settled that, "The law differentiates between an investigatory stop of a moving vehicle and an investigation of an already stopped vehicle." *State v. McKenzie*, 392 N.W.2d 345, 346 (Minn. App. 1986). Law enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals in public places or in a parked car and asking questions. *See United States v. Drayton*, 536 U.S. 194, 200, 122 S. Ct. 2105, 2110 (2002); *Harris*, 590 N.W.2d at 98**;** *Overvig*, 730 N.W.2d at 792; *McKenzie*, 392 N.W.2d at 346–47; s*ee also State v. Pfannenstein*, 525 N.W.2d 587, 589 (Minn. App. 1994), *review denied* (Minn. Mar. 14, 1995) (holding that a single request for identification of the owner of a parked motorcycle, without more, did not constitute a seizure); *Blank v. Comm'r of Pub. Safety*, 358 N.W.2d 441, 442 (Minn. App. 1984) (holding that there was no seizure when an officer who

observed a car parked on the roadway with the engine running and the lights on pulled up behind the car and asked to see the driver's license).

Appellant essentially argues that we adopt a bright-line rule that any request for identification by a police officer is a seizure. But, in previously rejecting this bright-line rule, we stated that the *Mendenhall* totality of the circumstances test is "not conducive to such line-drawing," recognizing that "[n]ot every request for identification rises to the level of intrusiveness that *Mendenhall* requires." *Pfannenstein*, 525 N.W.2d at 588.

And the district court erred as a matter of law when it effectively adopted a bright-line rule that a seizure occurs when an officer asks for identification without reasonable, articulable suspicion that a person was engaging in criminal activity. Although the district court cited *State v. Johnson*, 645 N.W.2d 505 (Minn. App. 2002) in support of its holding, that case does not support such a bright-line rule and is factually distinguishable from the instant case. In *Johnson*, this court clearly stated that "a person has been 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." *Id.* at 509 (citing *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995)) (emphasis added). The *Johnson* court then noted the circumstances in that case:

> The record shows that the officers pulled the vehicle over with flashing lights, parked the squad car behind the vehicle, and remained behind appellant's vehicle during the entire encounter. Appellant was seated in the back seat of the car [that police had pulled over], two policemen approached the vehicle and positioned themselves on each side of the vehicle, and the driver of the vehicle was specifically told by the officer not to go anywhere.

*Id.* at 510. The court held that *under those circumstances* police asking for Johnson's identification to run a warrant check constituted a seizure. *Id.* at 507, 510.

Appellant does not claim that he was seized when Officer Sannes walked up to his car and spoke with him briefly regarding his association with the female in whose name the car was registered, but only that he was seized the moment Officer Sannes requested his identification. But, unlike *Johnson*, here there is no evidence that Officer Sannes, by means of physical force or show of authority, restrained appellant's liberty. The undisputed testimony from Officer Sannes in this case was that appellant's car was already parked with the engine off when he arrived at the lot in his squad car. There is no evidence that Officer Sannes's squad car was blocking appellant's car. His undisputed testimony was that he had parked his squad car two car lengths behind appellant's car. Although Officer Sannes was in uniform and had a firearm, there is no evidence that he drew his firearm, turned on his emergency lights, ordered appellant to get out of his car and go to his squad car, or told appellant that he was not free to go. At some point during his very brief conversation with appellant, Officer Sannes either asked for appellant's identification or appellant "already had it in his hand." Officer Sannes explained during the omnibus hearing that he needed to get appellant's name so that he could include it in his report of the incident. Either way, none of these actions/events represent a physical force or show of authority by Officer Sannes that would make a reasonable person believe that they were not free to leave such that the circumstances would constitute a seizure at the moment Officer Sannes asked for identification. Applying the totality of the circumstances test to

the undisputed facts in this case, we conclude that appellant was not seized at the moment that Officer Sannes requested his identification.

We also note that while Officer Sannes had not seized appellant at the time he obtained appellant's identification, he could have lawfully done so under the totality of circumstances in this case. *See State v. Setinich*, 822 N.W.2d 9, 12–13 (Minn. App. 2012) (holding state trooper had a reasonable, articulable suspicion of criminal activity sufficient to perform an investigatory stop of vehicle after license-plate check revealed outstanding arrest warrant for registered owner); *see also State v. Lemert*, 843 N.W.2d 227, 230 (Minn. 2014) ("We evaluate whether a reasonable, articulable suspicion exists . . . from the perspective of a trained police officer, who may make 'inferences and deductions that might well elude an untrained person.'") (quoting *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 695 (1981)); *State v. Diede*, 795 N.W.2d 836 (Minn. 2011) (noting that the court is to determine reasonable, articulable suspicion based on the totality of the circumstances at the time of the seizure, the rational inferences from those facts, from the perspective of a reasonable police office); *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (noting that the reasonable suspicion standard is not high) (quotation omitted). Appellant was in a stopped car, in a hotel parking lot, near midnight, and the registered owner of that car had a warrant out for her arrest. And even individually innocent factors can create reasonable suspicion when considered together. *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998).

**Affirmed.**