STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0597

State of Minnesota,
Appellant,

vs.

Mary Catherine Wento,
Respondent.

Filed October 29, 2018
Affirmed
Reilly, Judge

Koochiching County District Court
File No. 36-CR-17-802

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

Jeffrey Naglosky, Koochiching County Attorney, Molly J. French, Assistant County Attorney, International Falls, Minnesota (for appellant)

Daniel L. Griffith, Griffith Law Office, International Falls, Minnesota (for respondent)

Considered and decided by Smith, Tracy, M., Presiding Judge; Reilly, Judge; and Smith, John, Judge.[*]

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

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

REILLY, Judge

The district court granted respondent's motion to dismiss for lack of probable cause. The state appealed, arguing that the district court erred in finding that a trooper unlawfully seized respondent when he activated his squad car emergency lights after respondent pulled away from the side of the road. We affirm.

FACTS

In the early morning of October 28, 2017, respondent Mary Wento was driving southbound on Highway 53. A Minnesota State Trooper was traveling northbound along the same highway when he saw Wento's car. He observed no traffic violations as he passed her, but waited until Wento's car was out of sight before turning around to follow her. Down the highway, Wento had pulled off to the side of the road. As the trooper pulled up behind her car, he saw the passenger door open and someone crouched beside it. The unidentified person got back into the car and closed the door, and the car pulled away from the side of the road. The trooper activated his squad car lights and stopped Wento's car.

The trooper walked up to Wento's car to talk with her. He learned that Wento had pulled to the side of the road because her passenger had to vomit. The trooper could smell a moderate odor of alcohol and noticed that Wento slurred her words as she spoke. Wento admitted to having a couple beers earlier in the day, and the trooper ordered her out of the car to do field sobriety tests. After showing various indicators of being impaired and failing the preliminary breath test, Wento was arrested and later consented to a breath test. Her alcohol concentration was above the legal limit and she was charged with fourth-degree

driving while impaired in violation of Minn. Stat. § 169A.27, subd. 1 (2016) and operating a motor vehicle with an alcohol concentration of .08 in violation of Minn. Stat. § 169A.20, subd. 1(5) (2016). Wento filed a motion to dismiss the charges for lack of probable cause and a motion to suppress all evidence seized.

At the motion hearing, the trooper testified that he stopped Wento's vehicle to perform a welfare check. The district court found that instead he initiated a traffic stop when he activated his lights and had no reasonable articulable suspicion for such a seizure. Finding that all evidence seized was in violation of Wento's constitutional rights because the trooper did not have reasonable suspicion to initiate a stop, the district court granted Wento's motion to dismiss the case for lack of probable cause. This appeal follows.

D E C I S I O N

A person may be charged with a crime only where there is probable cause. *State v. Lopez*, 778 N.W.2d 700, 703 (Minn. 2010). The standard for granting a motion to dismiss for lack of probable cause "is whether the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict of acquittal if proved at trial." *State v. Diedrich*, 410 N.W.2d 20, 22 (Minn. App. 1987). This court reviews "factual findings underlying a probable cause determination using the clear error standard, but review[s] the district court's application of the legal standard of probable cause to those facts de novo." *Lopez*, 778 N.W.2d at 703.

Here, the motion for dismissal for lack of probable cause was granted because the district court found that the trooper lacked reasonable articulable suspicion to stop Wento. Thus, we must first determine if the district court erred in finding that an unconstitutional

seizure occurred. We review de novo if the facts support a determination that the trooper lacked reasonable suspicion. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011). If the district court did not err in finding an unconstitutional seizure, then dismissing for lack of probable cause is warranted because the only evidence of impaired driving would have to be suppressed as fruit of the illegal seizure.[2]

I. A Seizure Occurred when the Trooper Activated his Lights.

A seizure occurs "when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n. 16, 88 S. Ct. 1868, 1879 n. 16 (1968)). To determine if a seizure has taken place, this court looks to "whether a police officer's actions would lead a reasonable person under the same circumstances to believe that she was not free to leave." *State v. Lopez*, 698 N.W.2d 18, 21 (Minn. App. 2005). This analysis depends on the totality of the circumstances. *Id.*; *see also E.D.J.*, 502 N.W.2d at 783.

In this case, the trooper testified at the motion hearing that he did not activate his emergency lights when he pulled up behind Wento's car, but instead waited until she "started driving away." It is generally established that a seizure occurs when a police officer stops a vehicle. *See State v. Bergerson*, 659 N.W.2d 791, 795 (Minn. App. 2003) (holding that a "driver confronted with a trailing squad car with flashing red lights

[2] While respondent makes additional arguments beyond the scope of the stop, we will not consider those issues because we affirm the district court's order dismissing the charges based on the trooper's lack of reasonable articulable suspicion.

inevitably feels duty bound to submit to this show of authority by pulling over"); *see also Delaware v. Prouse*, 440 U.S. 648, 653, 99 S. Ct. 1391, 1396 (1979). The state relies on *State v. Hanson*, which holds that activating squad lights alone does not constitute a seizure on an already stopped vehicle and can instead be construed by a reasonable person as a welfare check. 504 N.W.2d 219, 220 (Minn. 1993). In this case, though, Wento was not parked on the side of the road and was instead driving away from the trooper when he activated his emergency lights. Unlike a welfare check, the use of emergency lights signaled to Wento "that the officer [was] attempting to seize [her] for investigative purposes." *Id*. The state provides no argument to counter the trooper's testimony at the hearing: that he activated his lights after Wento pulled away from the side of the road. Therefore, because a reasonable person would feel restrained in this situation, the district court did not err in finding the seizure took place when the trooper activated his lights.

II. The Seizure was Unreasonable.

A trooper may initiate an investigative stop if he has a "particularized and objective basis for suspecting the particular persons stopped of criminal activity." *Berge v. Comm'r Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985). "All that is required is that the stop be not the product of mere whim, caprice, or idle curiosity." *Marben v. Dept. of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980). Any violation of a traffic law is enough to form a particularized and objective basis for a stop. *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004). "Whether a seizure is constitutional is a question of law and is reviewed de novo." *Lopez*, 698 N.W.2d at 22.

The record does not support that the trooper had a "particularized and objective" basis to suspect Wento was engaged in criminal activity. *Berge*, 374 N.W.2d at 732. The trooper did not observe Wento speeding, swerving, crossing the fog line, or driving erratically. The lights on the vehicle were all functioning properly and no criminal activity was observed. Wento had not violated any traffic laws and the trooper did not articulate any other particularized or objective basis for the stop at the hearing. Instead he testified that he only stopped the vehicle for a welfare check, which is not a suspicion of criminal activity.

The state argues that even if the trooper did not have reasonable articulable suspicion to stop Wento's car, the emergency-aid exception applies to the seizure. While an exception to the protections against warrantless seizures exists for emergency situations, we find that the exception does not apply here. *See State v. Auman*, 386 N.W.2d 818, 820-21 (Minn. App. 1986), *review denied* (Minn. July, 16, 1986) (noting that the emergency exception to the warrant requirement allows officers to provide emergency assistance to injured or unconscious persons). To examine if the emergency aid exception applies, this court determines: "(1) is the officer motivated by the need to render aid or assistance; and (2) under the circumstances, would a reasonable person believe that an emergency existed." *Lopez*, 698 N.W.2d at 23 (citing *Auman*, 386 N.W.2d at 821).

Here, the trooper pulled up behind Wento's car and noticed the passenger's door was open with someone crouched outside. The passenger returned to the car and closed the door, and the car pulled away. Only after initiating the stop did the trooper learn that the passenger had been throwing up. The trooper testified at the hearing that he did not

"know what [was] happening in that vehicle," indicating that he was not motivated by the need to render aid. Additionally, he was not called to this scene to check on anyone's wellbeing. *See Lopez*, 698 N.W.2d at 23 (noting that "an officer responding to a call to investigate someone unconscious or sleeping in a vehicle is justified in investigating the welfare of that individual"). Further, a reasonable person under these circumstances would not believe an emergency existed when a vehicle briefly pulled off to the side of the road, then eventually drove away with no traffic violations. Because the trooper was not reasonably motivated by the need to render assistance and no reasonable person would believe an emergency existed, the emergency-aid exception does not apply and the stop was constitutionally unreasonable.

Affirmed.