STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0547

Thomas Randal Schreyer, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed December 16, 2019
Affirmed
Jesson, Judge

Brown County District Court
File No. 08-CV-18-310

Steven P. Groschen, Kohlmeyer Hagen Law Office, Chtd., Mankato, Minnesota (for appellant)

Keith Ellison, Attorney General, Jacqueline A. Destache, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Jesson, Judge; and Kirk, Judge.*

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

JESSON, Judge

After getting his van stuck in a foot of snow, appellant Thomas Randal Schreyer

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

was arrested for driving while impaired. He challenges the resulting revocation of his driver's license, alleging that the officer unjustifiably seized him by opening his van door and administered a preliminary breath test in violation of his constitutional rights. Because the officer's conduct was lawful and the breath test was justified, we affirm.

FACTS

On an early, snowy morning in February 2018, an officer was patrolling in New Ulm. Driving conditions were poor. Little plowing had been done after significant snowfall, which resulted in about a foot of snow in the intersections. Having helped many other stranded cars that night, the officer noticed a van stuck in the snow. Two people were standing just ahead of the van and one person (appellant Thomas Randal Schreyer) was sitting in the van's driver's seat. The van was still running. The people ahead of the van appeared to be trying to attach a tow rope to the van from a truck parked in front of it. Concerned that the van was a hazard to oncoming traffic, the officer turned on his rear emergency lights and parked nearby in the street.

The officer walked up to see if the people needed any help. He went to the driver's side door of the van and tapped on the window, trying to get Schreyer's attention. But Schreyer avoided all eye contact, staring ahead with both hands firmly on the steering wheel. The officer then went to the front of the van and tried tapping the windshield. And Schreyer turned his head away, seemingly trying to avoid eye contact with the officer. Noting this, the officer became concerned for the driver's welfare and tapped on the driver's window again. Schreyer did not respond.

Finding this behavior unusual, the officer opened the door to check if Schreyer was

okay. When asked for identification, Schreyer struggled to get it out. The officer also noticed that Schreyer appeared lethargic, "had a look of stupor," was speaking slowly, and had bloodshot, watery eyes. And the officer smelled alcohol. When asked if he had been drinking, Schreyer said he had three, maybe four beers that night.[1] At the officer's request, Schreyer submitted to a preliminary breath test, which he failed. As a result, the officer arrested Schreyer for suspicion of driving while impaired.

The respondent commissioner of public safety revoked Schreyer's driver's license following the incident. Schreyer filed a petition to reinstate his license, and the district court held an implied-consent hearing. The officer testified consistent with the facts above. After the hearing, the district court denied Schreyer's request for license reinstatement. In its written order, the district court explained that Schreyer was not seized when the officer opened his van door but that, if he was, the seizure was lawful under the emergency-aid exception to the warrant requirement, and that the preliminary breath test was supported by reasonable suspicion. Schreyer appeals.

D E C I S I O N

Schreyer challenges the district court's denial of his petition to reinstate his driver's license arguing that the officer's conduct infringed on his Fourth Amendment rights. Because the officer obtained evidence in violation of his rights, according to Schreyer, it should be excluded and his driver's license should be reinstated. Specifically, Schreyer first argues that the officer illegally seized him by opening his van door—a seizure that

[1] The officer did not have Schreyer complete field sobriety tests because of the deep snow, and Schreyer told the officer he had a previous head injury.

was not justified by the emergency-aid exception to the warrant requirement. Second, Schreyer contends that the officer's administration of a preliminary breath test was unlawful because it was not supported by reasonable, articulable suspicion.

Both the United States and Minnesota Constitutions guarantee individuals the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. And courts generally exclude evidence obtained in violation of this right. *State v. Trahan*, 886 N.W.2d 216, 223 (Minn. 2016). Although we presume that a warrantless search or seizure is unreasonable, *State v. Stavish*, 868 N.W.2d 670, 675 (Minn. 2015), this presumption may be overcome in some circumstances if an exception applies. *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943, 1947 (2006). Because ultimately, the "touchstone of the Fourth Amendment is reasonableness." *Id.* (quotation omitted).

Below, we first address the seizure issue, concluding that the officer did not seize Schreyer. We then turn to the question of whether reasonable suspicion supported the officer's administration of the preliminary breath test.

I. The district court did not err by concluding that Schreyer was not seized when the officer opened the van door.

Schreyer argues that the officer seized him by opening his van door. We review questions of law de novo in an implied-consent hearing. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010). And we review findings of fact for clear error and will not reverse unless "we are left with a definite and firm conviction that a mistake has been committed." *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440

(Minn. 2002) (quotation omitted).

Here, the district court concluded that the officer did not seize Schreyer when he opened the van door because the officer was conducting a welfare check and a reasonable person would have felt free to leave. In light of applicable precedent, we agree.

A person is seized when a reasonable person in their position would not feel free to leave or an officer restrains their liberty by physical force or show of authority. *In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993). And seizures are assessed in light of the totality of the circumstances. *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877 (1980).

Generally, when a police officer stops a vehicle, it is a seizure. *Whren v. United States*, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 1772 (1996). But Minnesota courts have held that it does not, without more, constitute a seizure for an officer simply to walk up and talk to a driver sitting in an already stopped car. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980). This is particularly true when an officer approaches a parked car to see if the occupants need help. *See State v. Klamar*, 823 N.W.2d 687, 690, 693 (Minn. App. 2012) (concluding that it was not a seizure but a welfare check for an officer to approach a car stopped on the interstate with a passenger vomiting out the side). In fact, "an officer has not only the right but a duty to make a reasonable investigation of vehicles parked along roadways to offer such assistance as might be needed and to inquire into the physical condition of persons in vehicles." *Kozak v. Comm'r of Pub. Safety*, 359 N.W.2d 625, 628 (Minn. App. 1984).

Here, the officer noticed a van stuck in a snowy intersection of a main road shortly

after midnight. The officer was concerned about the driver's well-being, as well as the hazardous location of the stuck van. Under our caselaw, the officer had a responsibility to reasonably investigate to see if he could help with the stuck van and to check on Schreyer in the driver's seat. *Kozak* is particularly instructive in this regard. 359 N.W.2d at 627. There, an officer approached a car stopped on a highway shoulder and found the driver sleeping inside. *Id.* The officer pounded on the window and the driver awoke and opened the door. *Id.* We reasoned that this was not a seizure because the officer was investigating a stopped car and officers have a duty to investigate and offer assistance. *Id.* at 628. In explaining why, we suggested that "[t]he occupant of an already parked car may be intoxicated, he may be suffering from sudden illness or heart attack, or may be just asleep. Surely, it is within a responsible peace officer's duty as it relates to the public to determine whether his assistance is needed." *Id.* We note that this is especially true when there is a foot of snow on the roads.

Still, Schreyer posits three reasons why a reasonable person in his position would not have felt free to leave, resulting in a seizure. First, Schreyer contends that the officer's squad car parked nearby with its rear emergency lights on was a show of authority indicating he could not leave. But the supreme court has held otherwise, explaining that the use of emergency lights when investigating a stopped vehicle on a highway shoulder at night does not, without more, turn the encounter into a seizure. *State v. Hanson*, 504 N.W.2d 219, 220 (Minn. 1993).[2]

[2] *State v. Lopez*, 698 N.W.2d 18 (Minn. App. 2005), upon which Schreyer relies, is not to the contrary. There, police emergency lights indicated a seizure because they were used in

Next, Schreyer argues that he felt he was not free to leave with the truck ahead of his van and his van stuck in the snow. But Schreyer also concedes that the truck in front of him and the snow blocked his van's movement and that the officer's squad car did not. And a seizure occurs when an *officer* restrains one's movement. *Lopez*, 698 N.W.2d at 21.

Finally, Schreyer contends that his body language (avoiding eye contact and turning his head away) communicated that he did not want to talk to the officer. But we have previously concluded that it is unreasonable to require an officer to communicate with an unresponsive driver through a closed car window when the driver refuses to lower the window. *Overvig v. Comm'r of Pub. Safety*, 730 N.W.2d 789, 792-93 (Minn. App. 2007), *review denied* (Minn. Aug. 7, 2007). In sum, we agree with the district court that the officer did not seize Schreyer.[3] And because Schreyer was not seized, his Fourth Amendment rights were not infringed.

But even if Schreyer was seized, it was justified. An exception to Fourth Amendment protections exists in emergencies. *Lopez*, 698 N.W.2d at 23. To determine whether the emergency-aid exception applies,[4] we consider first, whether the officer is

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a parking lot but here, as in *Hanson*, police emergency lights served as a warning to oncoming traffic. *Lopez*, 698 N.W.2d at 22. And in *Lopez*, the squad car partially blocked the subject's car by parking in front of it. *Id.* But here, the officer did not block Schreyer's van.

[3] Schreyer also argues that the officer should have asked either the passenger who was standing outside his van or the pickup-truck driver about Schreyer's condition rather than asking Schreyer himself. But the officer testified that he was concerned about Schreyer's well-being and whether he was okay with being towed. And Schreyer offers no support for the assertion that the officer should have relied on information from the people outside the van rather than talk to Schreyer himself.

[4] There is some overlap in jurisprudence about the emergency-aid and community-caretaker exceptions to the warrant requirement. While the parties did not

motivated by the need to render aid or assistance. *Id.* Here, the officer testified that he was motivated by his belief that Schreyer may need help. And the district court found the officer credible, a determination to which we defer. *State v. Olson*, 884 N.W.2d 906, 911 (Minn. App. 2016), *review denied* (Minn. Nov. 15, 2016).

Under the second part of the emergency-aid-exception test, we consider whether a reasonable person under the circumstances would believe that an emergency existed. *Lopez*, 698 N.W.2d at 23. The answer to this question is simple: yes. The officer discovered a van stuck in the middle of a main street intersection with an unresponsive driver. It is possible that the driver had a medical event that caused the van to become stuck or perhaps the driver was injured. A reasonable person in this situation would believe that something may be wrong with the driver such that checking on him would be appropriate. *See State v. Othoudt*, 482 N.W.2d 218, 223 (Minn. 1992) (determining whether an officer's actions are objectively reasonable requires considering "whether with the facts available to the officer at the moment of the seizure or search, would a person of reasonable caution believe that the action taken was appropriate"). And the scope of the officer's investigation was not more intrusive than necessary to check whether Schreyer was okay because the officer merely opened the van door and talked to him. *See Ries*, 920 N.W.2d at 632 (limiting the scope of the search to the emergency involved).

In sum, we agree with the district court that, under the totality of these

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argue the community-caretaker exception, we note that the supreme court has acknowledged that the exception applies in an automobile context. *Ries v. State*, 920 N.W.2d 620, 629-32 (Minn. 2018).

circumstances, the officer was motivated to assist a stranded motorist. And the officer's conduct amounted to a welfare check, not a seizure. But even if it was a seizure, the investigation was justified. Because the officer's actions were justified, they did not infringe on Schreyer's Fourth Amendment rights.

II. The district court did not err by concluding that the officer had reasonable, articulable suspicion to administer a preliminary breath test.

Schreyer also argues that the officer had no reasonable, articulable suspicion to justify administering a preliminary breath test. An officer may require a driver to take a preliminary breath test if the officer has reason to believe, based on the driver's conduct, that the driver is impaired. Minn. Stat. § 169A.41, subd. 1 (2018). We review questions of reasonable suspicion de novo. *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010). And courts consider this question "from the perspective of a trained police officer, who may make inferences and deductions that might well elude an untrained person." *State v. Lemert*, 843 N.W.2d 227, 230 (Minn. 2014) (quotation omitted).

The district court determined that the preliminary breath test was justified because the officer observed signs of intoxication and was justified in not administering field sobriety tests here. We agree. The officer testified that Schreyer was lethargic, had a look of stupor, spoke slowly, smelled like alcohol, had bloodshot and watery eyes, and admitted to drinking. Based on the officer's experience and training, he determined there was reasonable suspicion to justify a preliminary breath test. His observations support this conclusion, and the district court found the officer's testimony credible, a determination to

which we defer. *Olson*, 884 N.W.2d at 911.

Still, Schreyer makes two central arguments to support his claim that the officer did not have reasonable suspicion. First, he argues that the officer did not observe him driving in a manner that suggested he may be impaired. And Schreyer notes that his van being stuck in a snow bank does not necessarily suggest he made an error driving, given the snowy conditions. But the possibility of an alternative explanation does not preclude the officer from considering a fact in the totality of the circumstance.[5] Schreyer also contends that, while not required, field sobriety tests would have been useful. The officer testified, however, that he did not administer the usual field sobriety tests because the snowy conditions made them unsafe and likely inaccurate. And even without field sobriety tests, considering the other observed signs of intoxication, the officer had a reasonable, articulable suspicion to justify the preliminary breath test. Because the preliminary breath test was justified, Schreyer's Fourth Amendment rights were not infringed here. Accordingly, the district court did not err in sustaining his license revocation.

Affirmed.

[5] Additionally, Schreyer suggests without support that his bloodshot and watery eyes may have been from the snowy conditions. This argument is unsupported in fact or caselaw. *See Klamar*, 823 N.W.2d at 696 (concluding that bloodshot and watery eyes are indicia of intoxication).