STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0605

Brian John Blawat, et al.,
Appellants,

Floyd Blawat,
Plaintiff,

vs.

Ben Huener, et al.,
Respondents.

Filed January 13, 2020
Affirmed
Connolly, Judge

Roseau County District Court
File No. 68-CV-17-293

Ryan M. Theis, Hellmuth & Johnson, Edina, Minnesota (for appellants)

Keith Ellison, Attorney General, Liz Kramer, Solicitor General, St. Paul, Minnesota (for respondents)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Jesson, Judge.

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

CONNOLLY, Judge

Appellants challenge the district court's dismissal of their claim under 42 U.S.C. § 1983 (2012), as well as their claims for conversion, replevin, false arrest, and vicarious liability arising from an encounter with respondent, a Department of Natural Resources (DNR) conservation officer. Because the district court did not err when it concluded that qualified, official, and vicarious official immunity shielded respondents from appellants' claims, we affirm.

FACTS

Appellants Brian Blawat and Nancy Kasprowicz live in Roseau County, where respondent Ben Huener works as a conservation officer for respondent Minnesota DNR. Blawat and Officer Huener have an extensive history of negative interactions, which includes Officer Huener issuing several citations to Blawat. Officer Huener has also told community members that Blawat was "the biggest poacher in Roseau County" and that he was going to "get" Blawat.

The events underlying appellants' claims occurred on November 11, 2016. That morning, while Blawat and his uncle[1] were deer hunting, Blawat's uncle legally shot and killed a deer. Blawat tagged the deer and transported it for his uncle, with the expectation that Blawat would carve the deer and mount its antlers for display. Blawat was also transporting a set of antlers for a friend in his vehicle.

[1] Blawat's uncle died in 2018 during litigation of this case in district court. His estate declined to pursue his claims against respondents. *See* Minn. Stat. §§ 573.01-.02 (2018).

Later, appellants traveled in Blawat's vehicle to a large soybean field that he farmed. Appellants drove a half mile from the entrance into the field, intending to stop potential poachers or other illegal hunting activity. After dark, appellants returned to exit the field, but they encountered Officer Huener's vehicle blocking their path. When appellants approached the exit, Officer Huener activated his vehicle's emergency lights.

After stopping the vehicle, Officer Huener asked Blawat whether he was hunting in the field. Blawat responded that neither he nor Kasprowicz had been hunting. Officer Huener then checked appellants' licenses and guns, which were unloaded. During this encounter, Officer Huener alleged several times that Blawat was hunting with bait, which Blawat denied. In response to Officer Huener's question about the deer and antlers in the vehicle, Blawat explained that he was transporting the deer for his uncle and the antlers for a friend.

Officer Huener seized appellants' guns, cameras, memory cards, a bracket and camera stand, the deer antlers, and the deer Blawat's uncle had shot that morning. He then demanded that Blawat take a preliminary breath test (PBT). Blawat eventually agreed to perform the PBT after Officer Huener questioned if he was refusing the test. The PBT registered a 0.00 blood-alcohol content. This encounter lasted for around one hour.

Appellants sued respondents in March 2017, alleging claims of conversion, replevin, constitutional violations under 42 U.S.C. § 1983, false arrest, and vicarious liability. After appellants filed their civil case, the State of Minnesota charged Blawat and Kasprowicz for hunting with bait in violation of Minn. Stat. § 97B.328, subd. 1 (2016), and also charged Blawat with transporting a deer without the licensee first completing proper

registration in violation of Minn. Stat. § 97A.535, subd. 4 (2016). The state dismissed the criminal charge against Kasprowicz in July 2017. Blawat moved to dismiss the criminal charges against him and suppress the evidence derived from the encounter with Officer Huener. At the omnibus hearing, Officer Huener testified to his version of the events surrounding his encounter with appellants. Following the parties' submission of legal memoranda, the omnibus judge denied Blawat's motions, finding probable cause for the charges against him and reasonable suspicion for the stop of his vehicle. In February 2018, the state dismissed the charges against Blawat in exchange for a guilty plea in an unrelated case.

After appellants twice amended their complaint, respondents moved to dismiss under Minn. R. Civ. P. 12.02(e) for failure to state a claim. The district court granted respondents' motion on all of appellants' claims, except for their return of property claim under Minn. Stat. § 626.04 (2018).[2] This appeal follows.

D E C I S I O N

The heart of this appeal is the interplay between Minn. R. Civ. P. 12.02(e) and Minn. R. Evid. 201. Rule 12.02(e) provides that a case can be dismissed for failure to state a claim upon which relief can be granted. We review such dismissals de novo, accepting the facts alleged in the complaint as true while construing all reasonable inferences in favor of

[2] After this court dismissed appellants' initial appeal as premature on March 18, 2019, *see Blawat v. Huener*, No. A19-0357 (Minn. App. Mar. 18, 2019) (order), appellants and respondents executed a voluntary stipulation dismissing appellants' remaining return-of-property claim with prejudice on March 28, 2019. Appellants also brought their section 1983 claims against DNR and Officer Huener in his official capacity. They do not challenge the dismissal of these claims on appeal.

the nonmoving party. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). Dismissal under rule 12.02(e) is appropriate "only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (quotation omitted). Legal conclusions within a complaint do not bind a reviewing court. *Hebert*, 744 N.W.2d at 235.

Minn. R. Evid. 201 permits a court to take judicial notice of adjudicative facts in civil cases. Rule 201(b) states that "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

Appellants argue that by taking judicial notice of a prior omnibus order in Blawat's criminal case when it denied a motion to dismiss the criminal complaint, as well as a police report authored by Officer Huener, the district court erred because it relied on contested facts offered by Officer Huener. Appellants further argue that by doing this, the district court violated rule 12, which requires the court to view all facts in the complaint as true and all inferences in the light most favorable to appellants. *See Hebert*, 744 N.W.2d at 229.

Specifically, appellants argue that there are three largely *contested* facts cited as uncontroverted and relied on by the district court in its order dismissing their complaint. They are (1) that Officer Huener received an anonymous complaint that Blawat was hunting with bait, (2) that Officer Huener observed Blawat hunting with bait for three

consecutive days before initiating the stop, and (3) that the "bait" was only 150 yards from where Officer Huener observed Blawat hunting.

We have reviewed appellants' amended complaint. Paragraphs 27 and 28 contain the relevant allegations. Paragraph 27 provides:

> After tagging his deer, [Blawat's uncle] left the area to attend a Veteran's Day event. [Appellants] proceeded later in the day to a large stubble soybean field farmed by Brian Blawat to watch for potential poachers and other improper hunting activity on the property. They drove far out onto the stubble field, over one-half mile from the entrance to the field, which is located on its southeast corner.

Paragraph 28 provides:

> After dark, when [Appellants] drove to the exit from the field at the southeast corner of the property, they encountered Officer Huener blocking the exit with his vehicle. Officer Huener activated the flashing lights on his vehicle. From his location at the entrance, Officer Huener had little or no view of Brian Blawat's vehicle earlier, when it was out in the field.

These two paragraphs do indeed contest the second and third facts set out in the district court's order dismissing the case. However, a review of the amended complaint reveals no allegations that contradict the district court's conclusion that Officer Huener received an anonymous complaint that Blawat was hunting with bait.

We acknowledge the apparent tension between Minn. R. Civ. P. 12 and Minn. R. Evid. 201. We are of the view that caselaw would permit the district court to take judicial notice of facts in the omnibus order because the order is not subject to reasonable dispute and the facts contained within are "capable of accurate and ready determination by resort

to sources whose accuracy cannot *reasonably* be questioned." Minn. R. Evid. 201(b)(2) (emphasis added).

In *In re Welfare of Clausen*, the supreme court held that the district court did not err when it took judicial notice of the files and records of its juvenile and criminal divisions under Minn. R. Evid. 201(b) in a termination-of-parental-rights trial. 289 N.W.2d 153, 157 (Minn. 1980). In that case, the father objected to the court taking judicial notice after the attorney for the welfare department advised the father's counsel of its intention to request that the court make these records part of the proceedings. *Id.* at 156. The court in *Clausen* stated:

> The function of judicial notice is to expedite litigation by eliminating the cost or delay of proving readily verifiable facts. Judicial notice of records from the court in which a judge sits would appear to greatly serve this function and satisfy the requirement of [r]ule 201(b)(2).
>
> Further, in termination proceedings, it would appear advantageous to the parent to have notice of the records to be relied on by the petitioner so that they may be examined before the hearing. Otherwise, witnesses could be called at the termination hearing, testify as to the matters in the records, and possibly the parent would be unprepared to meet such evidence. Therefore, we find that the trial court properly took judicial notice of these records.

Id. at 157 (citation omitted). The supreme court seemed to place great weight on the fact that the father had notice that the welfare department's attorney would ask the trial court to take notice of the records.

Here, appellants specifically referenced the criminal case in paragraph 42 of the amended complaint. Therefore, we are hard pressed to believe that appellants would be

surprised that the district court might reference its order in the very case appellants cited in their amended complaint. Similarly, in *Rohricht v. O'Hare*, the appellant sued the attorneys and law firms for malpractice that represented him during his dissolution trial and later appeal. 586 N.W.2d 587, 588 (Minn. App. 1998), *review denied* (Minn. Feb. 24, 1999). The district court in the malpractice action took judicial notice of the trial court's dissolution decree supporting its decision that granting appellant custody of his children would not serve their best interest and this court's affirming opinion. *Id.* at 589. We held that the district court decision to take judicial notice of another court's "extensive factual record" was not error when considering a motion to dismiss for failure to state a claim. *Id.*

We might have a different view of a district court taking judicial notice of a police report. *Cf. In re Welfare of D.T.N.*, 508 N.W.2d 790 (Minn. App. 1993) (determining that the district court did not abuse its discretion by taking judicial notice of police reports in the court file when deciding to refer a juvenile for adult prosecution), *review denied* (Minn. Jan. 14, 1994). Police reports are never admitted in criminal cases. They contain hearsay and often refer to facts that are hotly contested. However, to resolve this appeal, we need not decide whether the district court erred in taking judicial notice of either the omnibus order or police report. By solely looking at the undisputed and unrefuted facts in the amended complaint and the district court's order, we conclude that the district court did not err in dismissing the complaint based on applicable immunity defenses.[3]

[3] Even if the district court erred, appellants cannot show prejudice from the district court's reliance on facts from the omnibus order and Officer Huener's police report that their complaint did not dispute or contradict. *See Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98

I. Qualified Immunity

Appellants first argue that the district court improperly ruled that qualified immunity shielded Officer Huener from liability on their section 1983 claim. The applicability of immunity to a government official's actions is a legal question that is reviewed de novo. *Mumm v. Mornson*, 708 N.W.2d 475, 481 (Minn. 2006).[4]

Government officials sued for damages under section 1983 may raise the affirmative defense of qualified or "good faith" immunity. *Elwood v. County of Rice*, 423 N.W.2d 671, 674 (Minn. 1988). Under this doctrine, government officials are immune from suit when "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982). To determine the applicability of qualified immunity, courts consider (1) whether the plaintiff has alleged facts showing the violation of a constitutional right, and (2) whether this right was "clearly established" at the time of the alleged violation. *Pearson v. Callahan*, 555 U.S. 223, 232, 129 S. Ct. 808, 815-16 (2009). Complaints alleging violations of section 1983 are subject to a slightly elevated pleading standard, and "[d]ismissal prior to discovery is proper if the actions plaintiffs allege are those a reasonable officer could have believed lawful." *Elwood*, 423 N.W.2d at 675-76.

(Minn. 1987) (stating that "[a]lthough error may exist, unless the error is prejudicial, no grounds exist for reversal").

[4] The ultimate dismissal of the criminal charges against both appellants does not affect our analysis. *See Baker v. McCollan*, 443 U.S. 137, 145, 99 S. Ct. 2689, 2695 (1979) (explaining that section 1983 does not provide a cause of action for every acquitted defendant or released suspect).

In assessing Officer Huener's actions here, we use an objective lens and ask "whether a reasonable officer could have believed [Officer Huener's actions] to be lawful, in light of clearly established law and the information [he] possessed." *Anderson v. Creighton*, 483 U.S. 635, 641, 107 S. Ct. 3034, 3040 (1987). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 1096 (1986). As for their section 1983 claim, appellants' complaint alleged that Officer Huener violated their Fourth Amendment rights through his stop and search of their vehicle, seizure of their property, and demand for Blawat to take a PBT. We address these issues in turn.[5]

A. Stop of vehicle

Appellants first dispute the validity of Officer Huener's investigative stop. The Fourth Amendment guarantees individuals the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. To conduct a lawful investigatory stop of a vehicle, law enforcement must possess "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695 (1981). When assessing reasonable suspicion, a reviewing court looks to the totality of the circumstances, allowing "officers to draw on their own experience and specialized training to make inferences from and deduction about the

[5] Both the Fourth Amendment and the qualified immunity standard require courts to conduct an objective inquiry, casting aside the individual officer's subjective state of mind. *Scott v. United States*, 436 U.S. 128, 138, 98 S. Ct. 1717, 1723 (1978) (Fourth Amendment); *Anderson*, 483 U.S. at 641, 107 S. Ct. at 3040 (qualified immunity). Thus, our analysis does not consider Officer Huener's alleged animus toward Blawat.

cumulative information available to them that might well elude an untrained person." *United States v. Arvizu*, 534 U.S. 266, 273, 122 S. Ct. 744, 750-51 (2002) (quotation omitted).

To begin, we observe that the omnibus judge in Blawat's criminal case found that Officer Huener had reasonable, articulable suspicion to stop Blawat's vehicle. The following record facts are undisputed or unrefuted. First, Officer Huener received an anonymous tip about Blawat hunting with bait on a specific tract of land. When Officer Huener responded to the area in question, he observed Blawat's truck in a nearby soybean field. Second, this incident occurred in November, within Minnesota's deer hunting season. Third, when appellants exited the soybean field in Blawat's truck, Officer Huener noticed that both vehicle occupants had blaze orange attire. Lastly, appellants had hunting rifles, though unloaded, with them in Blawat's truck.

These facts reflect that Officer Huener could have reasonably believed appellants were hunting. For instance, appellants' clothing and location, the time of year, and Officer Huener's training and experience as a DNR conservation officer, combined with the tip, suggest that a reasonable officer could have believed that appellants were hunting with bait. Officer Huener encountered Blawat in the same area that the anonymous tip reported. Based on the above information, qualified immunity applies because a reasonable officer would have believed Officer Huener's stop of the vehicle to be lawful to investigate appellants for hunting with bait.

B. Search of vehicle and seizure of items

Next, appellants argue that Officer Huener illegally searched their vehicle and unlawfully seized several items of their personal property. Searches and seizures made without a valid warrant are generally unreasonable unless they fall into a delineated exception. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967). The automobile exception is one such exception, and it allows police to search a vehicle, including closed containers inside the vehicle, without a warrant if they possess probable cause that the search will yield contraband or evidence of a crime. *United States v. Ross*, 456 U.S. 798, 825, 102 S. Ct. 2157, 2173 (1982). A police officer has probable cause to search under the automobile exception "when there are facts and circumstances sufficient to warrant a reasonably prudent person to believe that the vehicle contains contraband." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (quotation omitted).

As stated above, Officer Huener stopped appellants to investigate unlawful hunting activity. During this stop, he observed guns, deer antlers, and a recently dead deer in Blawat's truck. Upon questioning, Blawat explained that his uncle had shot the deer that he was transporting in his truck. Minnesota law requires a person transporting a deer for another licensee to ensure that a tag is attached to the deer showing the licensee's address, signature, license number, and the locations that the deer is being transported to and from. Minn. Stat. § 97A.535, subd. 4. A violation of the fish and game laws is a misdemeanor offense. Minn. Stat. § 97A.301, subd. 1(1) (2016). As a result, Blawat's answer and Officer Huener's visual observation of the deer provided probable cause to believe that Blawat's vehicle contained contraband or evidence of a crime. Thus, the district court did

not err in applying qualified immunity to Officer Huener's search of the vehicle because a reasonable officer would have believed there was probable cause to conduct the search.

Appellants' section 1983 claim also alleged that Officer Huener illegally seized various items of their personal property. "[A] seizure deprives the individual of dominion over his or her person or property." *Horton v. California*, 496 U.S. 128, 133, 110 S. Ct. 2301, 2306 (1990). Like warrantless searches, a warrantless seizure violates the Fourth Amendment unless it falls into an exception to the warrant requirement. *State v. Horst*, 880 N.W.2d 24, 33 (Minn. 2016). Under the plain-view exception, police may seize objects without a warrant when they are lawfully present in the place from which they view the object, they have a lawful right of access to the object, and the incriminating nature of the object is immediately apparent. *State v. Holland*, 865 N.W.2d 666, 671 (Minn. 2015).

Our above analysis of Officer Huener's stop and search of the vehicles controls the first two prongs of the plain-view test. Indeed, appellants do not dispute that Officer Huener could see the items in question. Officer Huener was lawfully present when he viewed these items in Blawat's truck. Similarly, he had a lawful right of access to them because he could perform a lawful search under the automobile exception.

The final prong requires that the seized object's incriminating nature be readily apparent. *Id.* Before seizing an item, police must have probable cause that the item possesses an incriminating nature. *State v. Zanter*, 535 N.W.2d 624, 631-32 (Minn. 1995). "Police have probable cause to seize an object in plain view if the facts available to the officer would warrant a person of reasonable caution in the belief that certain items *may be* useful as evidence of crime." *Holland*, 865 N.W.2d at 671 (quotation omitted). An

officer's background knowledge may heighten an object's incriminating nature. *See Zanter*, 535 N.W.2d at 632.

Officer Huener lawfully seized items related to hunting activity because he was investigating Blawat for illegal hunting activity. To that end, the incriminating nature of the dead deer and deer antlers was immediately apparent. The same is true for Officer Huener's seizure of appellants' game cameras and memory cards. A reasonable officer possessing Officer Huener's experience in investigating game and hunting violations would have probable cause to believe cameras and memory cards used to record animals "may be" evidence of a crime. *See Holland*, 865 N.W.2d at 671. In sum, qualified immunity shields Officer Huener's seizure of appellants' personal property.

C. Demand for PBT

Appellants argue that Officer Huener violated their Fourth Amendment rights when he demanded that Blawat take a PBT. While recent precedent reflects that a PBT is a search under the Fourth Amendment, this was not "clearly established" on the date of appellants' encounter with Officer Huener. *See Pearson*, 555 U.S. at 232, 129 S. Ct. at 815-16. For that reason, we apply prior precedent requiring an officer to possess reasonable suspicion of impaired driving before performing a PBT. *See, e.g.*, *State Dep't of Pub. Safety v. Juncewski*, 308 N.W.2d 316, 321 (Minn. 1981).

An officer need only observe one objective sign of intoxication to form a reasonable belief that a person is under the influence. *Holtz v. Comm'r of Pub. Safety*, 340 N.W.2d 363, 365 (Minn. App. 1983). Officer Huener's search of Blawat's truck revealed multiple empty whiskey bottles. Blawat also had an alcohol restriction on his driver's license.

Appellants do not dispute that Officer Huener found empty whiskey bottles. And while their counsel contended at oral argument that Officer Huener found these items after demanding a PBT, the complaint does not state this. A reasonable officer could have believed Officer Huener possessed reasonable suspicion that Blawat was under the influence given his observation of empty whiskey bottles and the fact that Blawat's driver's license restricted him from consuming alcohol. *See Anderson*, 483 U.S. at 641, 107 S. Ct. at 3040. The district court did not err in applying qualified immunity to Officer Huener's demand for a PBT.

II. Official Immunity

Appellants next contend that the district court erred in finding that official immunity shielded Officer Huener from liability on their conversion, replevin, and false arrest claims. Again, this court reviews de novo a district court's application of immunity. *Mumm*, 708 N.W.2d at 481.

Minnesota follows the common law doctrine of official immunity, which protects public officials charged by law with duties requiring them to exercise their judgment or discretion from liability unless they are guilty of a willful or malicious wrong. *Susla v. State*, 247 N.W.2d 907, 912 (Minn. 1976). A court's analysis of an official-immunity issue presents two questions: (1) whether the actions at issue involved ministerial or discretionary duties; and (2) if the actions were discretionary, whether the official acted willfully or maliciously. *Mumm*, 708 N.W.2d at 490.

At bottom, the conduct at issue is Officer Huener's detention of appellants and seizure of several items of their personal property. Minnesota courts have recognized that

police officers' duties call for the exercise of substantial judgment and discretion. *See, e.g.*, *Elwood*, 423 N.W.2d at 678-79. Appellants do not contend that Officer Huener performed ministerial acts. Thus, our analysis turns on whether Officer Huener acted willfully or maliciously during his encounter with appellants.

The terms "willful" and "malicious" are synonymous in the official-immunity context. *Rico v. State*, 472 N.W.2d 100, 107 (Minn. 1991). Generally, the existence of malice is a fact question, *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 664 n.5 (Minn. 1998), but the issue may be decided as a matter of law when the undisputed facts show a public official's actions did not exhibit malice, *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 465 (Minn. 2014). A public official's negligence does not equal malice; rather the official must intentionally commit a wrongful act without legal authority or willfully violate an individual's known rights. *Id.* "In order to find malice, the court must find that the wrongful act so unreasonably put at risk the safety and welfare of others that as a matter of law it could not be excused or justified." *Id.* (quotation omitted).

A. Conversion and replevin claims

We first address the district court's application of official immunity to appellants' conversion and replevin claims. Conversion is an act of willful interference with another's personal property, done without lawful justification, which deprives rightful persons from using or possessing the property. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). Replevin "is the appropriate means to recover possession of personal property—of definite things, and a means to determine the right of possession of personal property or the title thereto." *Storms v. Schneider*, 802 N.W.2d 824, 827 (Minn. App. 2011) (quotation and

citation omitted), *review denied* (Minn. Oct. 26, 2011). A viable replevin claim requires a showing that the property at issue was wrongfully detained. *A & A Credit Co. v. Berquist*, 41 N.W.2d 582, 584 (Minn. 1950).

We have already concluded that qualified immunity applied to Officer Huener's seizure of appellants' personal property. This determination precludes a finding that he acted willfully or maliciously because a legal justification accompanied his actions. Without willful or malicious conduct, an officer's performance of a discretionary function entitles him to official immunity. *Susla*, 247 N.W.2d at 912. Thus, the district court did not err here.

B. False arrest

The second official-immunity issue is whether Officer Huener is entitled to official immunity on appellants' false arrest claim. A false arrest claim requires (1) that the defendant arrest the plaintiff and (2) that the arrest be unlawful. *Lundeen v. Renteria*, 224 N.W.2d 132, 135 (Minn. 1974).

"The ultimate test to be used in determining whether a suspect was under arrest is whether a reasonable person would have concluded, under the circumstances, that he was under arrest and not free to go." *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984). A plaintiff must meet both prongs of this test "because a person who is being detained temporarily is not free to leave during the period of detention, yet that does not convert the detention into an arrest." *State v. Moffatt*, 450 N.W.2d 116, 119-20 (Minn. 1990). "There is no bright-line test separating a legitimate investigative stop from an unlawful arrest."

State v. Balenger, 667 N.W.2d 133, 139 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003).

Courts have delineated several situations when an arrest occurs. First, ordering a suspect to the ground and then handcuffing them constitutes an arrest. *State v. Carver*, 577 N.W.2d 245, 247-48 (Minn. App. 1998). Second, when police block a suspect's parked car, order the person out of that car with guns drawn, and conduct a pat-search, a reasonable person would believe they were under arrest. *State v. Rosse*, 478 N.W.2d 482, 486 (Minn. 1991). Lastly, our supreme court has held that a "de facto" arrest occurs when police handcuff a suspect, place the suspect in a squad car, and do not allow the suspect to leave. *State v. Blacksten*, 507 N.W.2d 842, 847 (Minn. 1993).

Appellants' complaint alleged that an unlawful arrest occurred based on these facts: (1) Officer Huener blocked their exit from a field with his vehicle, which had its lights flashing; (2) Officer Huener checked appellants' hunting licenses and guns, before accusing Blawat of hunting with bait several times; (3) Officer Huener seized Blawat's guns, cameras, memory cards, the deer antlers, and the deer Blawat's uncle had shot; (4) Officer Huener demanded that Blawat take a PBT; (5) the entire interaction lasted one hour; and (6) during the interaction, appellants could not leave the scene and remained confined in Blawat's truck. On these facts, the district court determined that official immunity applied because Officer Huener never arrested appellants.

We agree with the district court that official immunity shields Officer Huener from liability on appellants' false-arrest claim. Appellants have not pleaded sufficient facts to show that an arrest occurred. Because Officer Huener never formally arrested appellants,

the only arrest theory available is a "de facto arrest." *See Blacksten*, 507 N.W.2d at 847 (finding de facto arrest when police ordered suspect to the ground at gunpoint, handcuffed him, and placed him in a squad car). However, Officer Huener did not proceed with his weapon drawn, handcuff either appellant, or place them in his squad car. *Cf. State v. Askerooth*, 681 N.W.2d 353, 366 (Minn. 2004) (observing that police officer's order for driver to exit his vehicle and sit in squad car was highly intrusive).

Officer Huener's demand for Blawat to take a PBT also did not transform the investigation into an arrest. As noted above, Officer Huener made this demand after observing empty whiskey bottles. And Blawat faced no penalty for refusing the PBT. *See Vondrachek v. Comm'r of Pub. Safety*, 906 N.W.2d 262, 271 (Minn. App. 2017) (noting that drivers hold the right to refuse a PBT and face no criminal penalty for doing so), *review denied* (Minn. Feb. 28, 2018). A reasonable person under these circumstances would not have believed they were under arrest.

Although appellants stress that the stop lasted nearly an hour, this does not compel the conclusion that an arrest occurred. For one, the United States and Minnesota Supreme Courts have not delineated a bright-line limit on how long an investigatory stop can last before it becomes an arrest. *Blacksten*, 507 N.W.2d at 846 (citing *United States v. Sharpe*, 470 U.S. 675, 685, 105 S. Ct. 1568, 1576 (1985)). Instead, the particular facts and circumstances of each case will determine whether the length of a detention was unreasonable. *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999).

Even construing all reasonable inferences in appellants' favor, we conclude that no arrest occurred. Officer Huener's investigative detention of appellants was strictly related

to his initial purpose of stopping their vehicle—to investigate illegal hunting. During this investigation, he learned that Blawat was unlawfully transporting a deer for his uncle, prompting his search of the vehicle, and observed empty liquor bottles, prompting his demand that Blawat take a PBT. These actions did not transform the investigation of appellants into an arrest. Accordingly, official immunity applies to Officer Huener's actions because he did not commit a wrongful or malicious act in detaining appellants while investigating illegal hunting activity and suspected driving under the influence.

III. Vicarious Immunity

Lastly, appellants assert that the district court erred when it ruled that vicarious official immunity shielded DNR from their conversion and false arrest claims. Generally, when a public employee is found to be immune from suit, vicarious official immunity will shield his public employer from a suit stemming from the employee's conduct. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 508 (Minn. 2006). Yet even if a court finds that a public employee is immune from suit, the public employer is not automatically entitled to vicarious official immunity. *Sletten v. Ramsey County*, 675 N.W.2d 291, 300 (Minn. 2004). The extension of vicarious official immunity to a government employer is a policy question for the court to decide. *Schroeder*, 708 N.W.2d at 508.

Appellants fault DNR for not reprimanding or taking other action against Officer Huener based on his past negative interactions with Blawat. That said, appellants do not argue, and we cannot discern, how extending vicarious immunity here would contravene public policy. As noted above, the district court properly applied official immunity to

Officer Huener on appellants' conversion, replevin, and false arrest claims. As a result, we affirm the district court's grant of vicarious official immunity to DNR.

Affirmed.