STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0930

State of Minnesota,
Respondent,

vs.

Matthew Evan Kujava,
Appellant.

Filed June 1, 2020
Affirmed
Bjorkman, Judge

Lake of the Woods County District Court
File No. 39-CR-18-166

Keith Ellison, Attorney General, St. Paul, Minnesota; and

James Austad, Lake of the Woods County Attorney, Baudette, Minnesota (for respondent)

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

Grant S. Gibeau, Special Assistant Public Defender, Felhaber Larson, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Reyes, Judge.

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

BJORKMAN, Judge

Appellant challenges his conviction of third-degree possession of a controlled substance, arguing that the district court erred by denying his motion to suppress evidence

obtained during a warrantless search of his person. Because reasonable suspicion of criminal activity justified the search, we affirm.

FACTS

Around sunset on August 20, 2018, appellant Matthew Kujava was fishing with a companion from a pier in Baudette. Conservation Officer Nicholas Prachar approached the two, asking them to produce their fishing licenses. Kujava's companion did not have a license; Officer Prachar spoke with the two as he processed her citation. During the approximately 45-minute encounter, Officer Prachar observed that both acted nervous, beyond what seemed normal for "just a regular fishing check." He asked about their business in Baudette, talking to each of them separately, and received inconsistent stories. He also learned that neither had a valid license to drive the truck in which they had arrived. Officer Prachar checked Kujava's criminal history and discovered that he had multiple felony controlled-substance convictions in the previous five years.

As Officer Prachar finished issuing the citation, Lake of the Woods County Sheriff's Deputy Russell Platz approached to ask whether he needed assistance. Officer Prachar declined, and they both left, then stopped out of sight nearby to discuss Kujava and his companion. Officer Prachar described their nervous conduct and inconsistent stories, indicated that he suspected they might be under the influence of a controlled substance, and told Deputy Platz about Kujava's criminal history. Deputy Platz particularly noted one aspect of what Kujava had told Officer Pracher—that he and his companion had been at the residence of a woman whom Deputy Platz knew to be regularly involved in "drug activity" for years. In light of those circumstances, and the fact that he had never seen

anyone else fishing from the pier "at that time of night," Deputy Platz returned to speak to Kujava.

The deputy asked Kujava if he was on probation. Kujava stated that he was but did not know who his probation officer was. Deputy Platz asked for Kujava's identification card so he could check Kujava's probationary status from the computer in his squad car. He asked Kujava and his companion to sit on the ground next to the front corner of the car while he did so. They both complied. But Kujava stood up again "after several seconds" and began moving around. After confirming that Kujava was subject to a probation condition requiring him to "submit to random searches," Deputy Platz exited the car to speak with Kujava. Like Officer Prachar, he noted that Kujava appeared nervous, his speech was rapid, and he kept moving around, which led him to believe that Kujava was under the influence of a controlled substance. Deputy Platz decided to search Kujava. In Kujava's jacket, the deputy discovered a glasses case that contained needles and a small amount of methamphetamine.

Kujava was charged with third-degree possession of a controlled substance. He moved to suppress the drug evidence, arguing that Deputy Platz lacked any basis other than Kujava's probationary status to seize and search him. After considering testimony from Officer Prachar and Deputy Platz, the district court denied the motion, reasoning that "only reasonable suspicion was required" to search Kujava and "a valid basis exists [for the search] because [Kujava] is a probationer and subject to random searches and seizures as set forth in his probation conditions." Kujava thereafter waived a jury trial and submitted

the charge to the district court on stipulated facts. The district court found Kujava guilty. Kujava appeals.

D E C I S I O N

When reviewing a pretrial order denying a motion to suppress evidence, we review the district court's factual findings for clear error. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011). But we review de novo whether the facts justify the challenged police conduct. *Id.*

The United States and Minnesota Constitutions protect against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. A search generally must be conducted based on a warrant supported by probable cause. *State v. Bursch*, 905 N.W.2d 884, 890 (Minn. App. 2017). But the "touchstone" of the Fourth Amendment is reasonableness, which depends on the degree to which a search intrudes on an individual's privacy and the degree to which the search is needed to promote legitimate governmental interests. *United States v. Knights*, 534 U.S. 112, 118-19, 122 S. Ct. 587, 591 (2001). A person's status as a probationer subject to a search condition affects both factors—probationers have a diminished expectation of privacy, and the government has a legitimate interest in monitoring probationers to avoid recidivism and reintegrate them back into the community. *Id.* at 119-21, 122 S. Ct. at 591-92; *see also State v. Anderson*, 733 N.W.2d 128, 137 (Minn. 2007) (noting that Minnesota has historically recognized probationers' reduced expectation of privacy). These considerations reduce the level of suspicion required for a search to "no more than reasonable suspicion" and obviate the warrant requirement. *Knights*, 534 U.S. at 121, 122 S. Ct. at 593. Consequently, a police

officer may conduct a warrantless search of a probationer if (1) the probationer is subject to a valid search condition and (2) the officer has reasonable suspicion that the probationer is engaged in criminal activity. *Anderson*, 733 N.W.2d at 137.

Kujava argues that the district court erred by concluding that Deputy Platz's search was valid based solely on the search condition of his probation. This argument has merit. The *Knights* Court held that probable cause is not required to search a probationer subject to a search condition. But the Court expressly declined to sanction searching a probationer without any individualized suspicion. *Knights*, 534 U.S. at 120 n.6, 121, 122 S. Ct. at 592 & n.6 (declining to decide whether a probationary search condition would justify a search "without any individualized suspicion"); *cf. Samson v. California*, 547 U.S. 849, 850, 126 S. Ct. 2193, 2198 (2006) (upholding suspicionless searches of parolees, emphasizing that "parolees have fewer expectations of privacy than probationers"). And while probationers have a significantly higher recidivism rate than the general crime rate, the mere fact that a person is on probation is insufficient to establish a reasonable suspicion that he is currently engaged in criminal activity. *See Knights*, 534 U.S. at 120, 122 S. Ct. at 592. Accordingly, the district court erred by concluding that Deputy Platz was justified in seizing and searching Kujava based on his probationary status, without analyzing whether the circumstances established a reasonable suspicion of criminal activity.

The fact the district court's analysis is legally flawed does not end our analysis. Rather, we consider de novo whether the undisputed facts establish reasonable suspicion of criminal activity to justify the seizure and search. *Diede*, 795 N.W.2d at 843.

We turn first to the question of when Deputy Platz seized Kujava. If he seized Kujava without a valid basis for doing so, any evidence gathered thereafter must be suppressed. *State v. Harris*, 590 N.W.2d 90, 97 (Minn. 1999). A seizure occurs when a reasonable person, in view of all of the circumstances, would believe that he "was neither free to disregard the police questions nor free to terminate the encounter." *Id.* at 98 (quotation omitted). An officer approaching a person in a public place and asking questions generally does not constitute a seizure. *State v. Johnson*, 645 N.W.2d 505, 509 (Minn. App. 2002). And an officer requesting identification is not necessarily a seizure. *State v. Pfannenstein*, 525 N.W.2d 587, 588 (Minn. App. 1994), *review denied* (Minn. Mar. 14, 1995). But the addition of other circumstances may elevate such contacts to a seizure. *Id.* at 589. Those circumstances include the presence of multiple officers or an officer using commanding language or tone of voice. *Harris*, 590 N.W.2d at 98; *see also State v. Day*, 461 N.W.2d 404, 407 (Minn. App. 1990) (concluding defendant was seized when officer summoned him to the squad car to identify himself and respond to questioning), *review denied* (Minn. Dec. 20, 1990).

Kujava contends that he was seized when Deputy Platz returned in his squad car, inquired about his probation, asked him to produce his identification for a second time, and directed Kujava and his companion to sit down in front of the squad car. We agree. Indeed, Deputy Platz acknowledged that, under these circumstances, it would have been reasonable for Kujava and his companion to believe they were not free to leave. Accordingly, we consider whether the seizure and subsequent search are valid.

As noted above, Deputy Platz required no more than reasonable suspicion for either intrusion. *Knights*, 534 U.S. at 121, 122 S. Ct. at 592; *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (stating that a brief investigative seizure of any person is permissible upon a showing of reasonable suspicion). The reasonable-suspicion standard requires more than "an unarticulated hunch," *Anderson*, 733 N.W.2d at 138 (quotation omitted), but it is "not high," *Deide*, 795 N.W.2d at 843 (quotation omitted). A particularized and objective basis for believing a probationer is involved in criminal conduct is sufficient. *Anderson*, 733 N.W.2d at 138. When articulating reasonable suspicion, police officers may rely on their specialized training to "make inferences and deductions that might well elude an untrained person." *State v. Smith*, 814 N.W.2d 346, 352 (Minn. 2012).

Kujava contends Deputy Platz lacked reasonable suspicion of criminal activity because he knew only that Kujava had a criminal record and was associated with a person involved with controlled substances. He points to the deputy's testimony that he acted on a "hunch." But that subjective characterization does not control our analysis of reasonable suspicion, which turns on whether the available information establishes an "objective basis for suspecting the seized person of criminal activity." *Diede*, 795 N.W.2d at 843. As Deputy Platz clarified, he did not seize and search Kujava based on an unarticulated hunch but a belief, based on specific facts, that Kujava was using or selling controlled substances.

The record amply supports that belief and establishes reasonable suspicion. Kujava and his companion were fishing at an unusual hour, offered conflicting explanations for their presence, and exhibited nervousness that was inconsistent with a routine fishing check. *See Smith*, 814 N.W.2d at 354 (stating that evasive behavior and nervousness that

is unreasonable under the circumstances may contribute to reasonable suspicion). Kujava had multiple recent felony controlled-substance convictions. *See State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016) (considering recent arrest on a similar charge as contributing to reasonable suspicion); *accord State v. Holiday*, 749 N.W.2d 833, 844 (Minn. App. 2008) (stating that a person's criminal record may contribute to probable cause). And he acknowledged being at the residence of a person whom police knew to be regularly involved in "drug activity." While such association may not itself be enough to establish reasonable suspicion of controlled-substance possession, *Diede*, 795 N.W.2d at 844, it is a relevant circumstance that police may consider in assessing reasonable suspicion. *See Lugo*, 887 N.W.2d at 487 (stating that presence in a "known drug house" contributes to reasonable suspicion). The totality of the circumstances that Officer Prachar and Deputy Platz observed establish a reasonable basis for suspecting Kujava of possessing controlled substances, justifying a brief investigative seizure and the subsequent search.[1] Accordingly, even though the district court erred by failing to analyze reasonable suspicion, the undisputed factual record supports its denial of Kujava's motion to suppress.

Affirmed.

[1] We observe that Kujava exhibited additional suspicious behavior in the brief interim between the seizure and the search—rapid speech, inability to remain still, removing his jacket and balling it up—that further justified the search.