STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1572

Nicholas Roger Marczak, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed August 23, 2021
Affirmed
Hooten, Judge

Stevens County District Court
File No. 75-CV-20-196

Daniel J. Koewler, Charles A. Ramsay, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota (for appellant)

Keith Ellison, Attorney General, Cory J. Marsolek, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Hooten, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this appeal under Minn. Stat. §§ 169A.50–.53 (2018), appellant challenges the district court's order sustaining the revocation of his driver's license on the basis that he was unlawfully seized. We affirm.

FACTS

On June 17, 2020, at approximately 12:51 a.m., Morris Police Corporal Kyle Brundage was on duty when he observed a vehicle pull into the Wilkens Industries' parking lot and turn off its lights. Wilkens Industries borders County Road 22, a two-lane paved highway. Corporal Brundage testified that he does not often see vehicles on County Road 22 at that time of night and that he did not recognize the vehicle from his prior patrolling of that business during overnight hours. Although Wilkens Industries' main entrance is on the east side of the building, the driver of the vehicle drove to the building's north side. There were no other vehicles in the parking lot at that time. Wilkens Industries, as well as most other local businesses (aside from a local ethanol plant), were all closed.

Corporal Brundage testified that he "almost never" sees vehicles at Wilkens Industries at that time of night, although he had worked for the Morris Police Department for approximately two years and routinely monitors closed businesses in Morris during his shifts to prevent criminal activities such as burglaries, vandalism, and thefts. Corporal Brundage also testified that he thought it was suspicious that the car had stopped in the parking lot at that hour and that "nobody exited the vehicle," although the car had been parked for "around a minute." Corporal Brundage explained that based on his training and experience, the conduct he observed indicated "potentially criminal activity"—specifically that the driver of the vehicle could be "watching a business in preparation to conduct a burglary or theft." Corporal Brundage testified that burglaries typically occur in the nighttime hours in Morris County.

Corporal Brundage therefore drove his squad car toward the vehicle and parked diagonally behind it, without activating his emergency lights but keeping his headlights on. The vehicle could have maneuvered out to exit the parking spot, though it "would have been difficult," requiring "a bit of backing and filling to do so."

Corporal Brundage testified that he approached the vehicle with its motor still running and noticed "several cardboard containers for alcoholic beverages" inside the vehicle as well as "an open Coors Light can in the center console." Next, Corporal Brundage identified the driver of the vehicle as Marczak. After a brief investigation, Corporal Brundage arrested him for driving while impaired, and respondent Minnesota Commissioner of Public Safety subsequently revoked Marczak's driving privileges under the implied consent law. Minn. Stat. §§ 169A.50-.53. Marczak petitioned the district court for judicial review of the revocation arguing that his revocation should be reversed because he was unlawfully seized by Corporal Brundage.

At an evidentiary hearing on Marczak's petition for review of the revocation, the district court heard testimony from Corporal Brundage and received his dashboard camera video and the transcript of the video as exhibits. After the hearing, the district court issued an order sustaining the revocation of Marczak's driver's license. The district court concluded that no stop occurred, and thus the evidence obtained during the encounter was admissible and "probable cause exist[ed] to sustain the criminal charges and the license revocation." The district court also concluded that, even if a stop did occur, Corporal Brundage had a reasonable and articulable suspicion to make the stop given the "vehicle's

position, [Marczak's] behavior and [the vehicle's] presence in that place at that time of night." Marczak appeals.

DECISION

Marczak argues that because he was unlawfully seized during his encounter with law enforcement, this court should reverse the district court's order sustaining the revocation of his driving privileges. We review a district court's findings of fact sustaining an implied consent revocation for clear error and will "overturn conclusions of law only if the district court erroneously construed and applied the law to the facts of the case." *Ellingson v. Comm'r of Pub. Safety*, 800 N.W.2d 805, 806 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011) (quotation omitted). It is the commissioner's burden to demonstrate that revocation was appropriate by a preponderance of the evidence. *Id.* Fourth Amendment principles in criminal cases apply equally in the context of license-revocation proceedings. *See Knapp v. Comm'r of Pub. Safety*, 610 N.W.2d 625, 628 (Minn. 2000) (relying on criminal cases in analyzing the legality of a traffic stop in a civil case).

The Minnesota Constitution, like the United States Constitution, protects "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." Minn. Const. art. I, § 10; *accord* U.S. Const. amend. IV. A seizure occurs "when [an] officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Matter of 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 whether a person has been seized, we apply the *Mendenhall-Royer* standard. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999); *see Florida v. Royer*, 460 U.S. 491, 501, 103 S. Ct. 1319 (1983); *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870 (1980). Under that standard, "a person has been seized if in view of all of 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." *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). Some circumstances that might indicate that a seizure has taken place include: "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Mendenhall*, 446 U.S. at 554-55, 100 S. Ct. 1870.

Encounters between law enforcement officers and citizens are not all considered seizures warranting Fourth Amendment protection. *See Terry*, 392 U.S. at 19 n.16, 88 S. Ct. 1868. For example, "[a] person generally is not seized merely because a police officer approaches him in a public place or in a parked car and begins to ask questions." *Harris*, 590 N.W.2d at 98. A seizure may occur when an officer intentionally blocks a car so that it cannot leave. *State v. Sanger*, 420 N.W.2d 241, 243 (Minn. App. 1988). Blocking in a car "so as to execute a seizure occurs only when the officer actually positions his squad car so as to prevent the other vehicle from leaving." *Illi v. Comm'r of Pub. Safety*, 873 N.W.2d 149, 152 (Minn. App. 2015). Additionally, a seizure may occur when the officer partially blocks the vehicle and shows some other form of authority that would indicate to a reasonable person that they are not free to leave. *See State v. Lopez*, 698 N.W.2d 18, 22

(Minn. App. 2005); *Klotz v. Comm'r of Pub. Safety*, 437 N.W.2d 663, 665 (Minn. App. 1989). In addition to the factors enumerated in *Mendenhall*, a show of authority may also include activating the squad car emergency lights, pounding on the vehicle window, or opening the driver's door of the vehicle. *Lopez*, 698 N.W.2d at 22. Absent these additional shows of authority, this court has found that no seizure occurs when the officer partially blocks a vehicle's movement. *See E.D.J.*, 502 N.W.2d at 781; *Crawford v. Comm'r of Pub. Safety*, 441 N.W.2d 837, 838-39 (Minn. App. 1989).

The district court concluded that no seizure occurred because Marczak was not completely blocked by the squad car, as he "would have been able to maneuver out from where [his car] was parked" and "could have driven off without undue difficulty." The parties do not dispute that Marczak could have maneuvered his vehicle out of the parking spot, even if it "would have been difficult," and required "a bit of backing and filling to do so." Marczak nonetheless argues that he was seized because Corporal Brundage parked diagonally behind him in the "precise spot that most effectively prevented him from leaving." Marczak notes that Corporal Brundage could have engaged in other behaviors that would have made it easier for him to leave; notably, stopping his squad car next to Marczak, rolling down his window to engage with him, or performing a "slow drive-by" to make his presence known. Instead, Marczak argues, Corporal Brundage "boxed" in his vehicle so that he could "technically" leave, but only after maneuvering his vehicle. This, Marczak contends, constituted a seizure. However, we conclude that, even if Corporal Brundage's squad car boxed in Marczak's vehicle so that he was effectively unable to

leave, the district court did not abuse its discretion by concluding that Corporal Brundage had a reasonable, articulable suspicion to conduct an investigatory stop of Marczak.

The United States and Minnesota Constitutions prohibit "unreasonable searches and seizures" by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Evidence obtained by unconstitutional seizures must be suppressed. *See State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). When reviewing the legality of a search or seizure, we will not reverse the district court's findings of fact unless they are clearly erroneous. *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997). We review de novo whether an unreasonable search or seizure occurred. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

Warrantless searches and seizures are presumptively unreasonable. *State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016). A police officer may initiate a limited, investigatory stop without a warrant if the officer has a reasonable, articulable suspicion of criminal activity. *Terry*, 392 U.S. at 22, 88 S. Ct. at 1868. Whether an officer has the requisite reasonable suspicion to conduct a limited, investigatory stop depends on the totality of the circumstances. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012).

The reasonable suspicion showing is "not high." *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006). Nevertheless, it requires more than an unarticulated "hunch." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). The standard is met "when an officer observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *Id.* A limited investigatory stop must be based on specific, articulable facts that allow the officer to articulate "that he or she had a particularized and objective basis for suspecting the seized person of criminal activity."

Diede, 795 N.W.2d at 842-43. In other words, a reasonable, articulable suspicion exists if "in justifying the particular intrusion the police officer [is] able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880.

Trained law enforcement officers are "permitted to make inferences and deductions that would be beyond the competence of an untrained person." *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001). "The court may consider the officer's experience, general knowledge, and observations; background information, including the nature of the offense suspected and the time and location of the seizure; and anything else that is relevant." *Klamar*, 823 N.W.2d at 691. Nevertheless, an officer may not act on "mere whim, caprice, or idle curiosity." *Marben v. State, Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980).

While the district court in this case concluded that no seizure occurred, it also concluded that, even if Officer Brundage seized Marczak, he had "reasonable and articulable suspicion" to do so. The district court determined that "[t]he actions of [Marczak] led [Corporal] Brundage to question whether criminal activity was afoot," and explained that "[t]he vehicle's position, [and Marczak's] behavior and presence in [the Wilkens Industries' parking lot] at [12:51 a.m.] warranted a prudent officer to inquire."

To support its conclusions, the district court made the following findings of fact. Corporal Brundage routinely patrols the Wilkens Industries' area to prevent criminal activity and "rarely – if ever – sees vehicles at Wilkens Industries at this time of night." At 12:51 a.m., Corporal Brundage saw Marczak's vehicle drive to the north side of the

Wilkens Industries' building, while the main entrance is on the building's east side. Wilkens Industries, as well as most other local businesses (aside from the local ethanol plant) were all closed at this time of night. When Corporal Brundage approached the vehicle, Marczak did not exit the vehicle, and the vehicle's motor was running. At that time, there were "no other vehicles moving in the area" and "none were parked."

These findings are supported by the following uncontroverted testimony from Corporal Brundage in the record that: (1) he was on duty when he observed a vehicle pull into the Wilkens Industries' parking lot and turn off its lights; (2) there were no other vehicles in the parking lot at that time; (3) Wilkens Industries, as well as most other local businesses (aside from a local ethanol plant) were all closed; (4) he does "not very often" see vehicles on County Road 22 at that time of night; (5) he "almost never" sees vehicles at Wilkens Industries at that time of night, although he routinely monitors closed businesses in Morris during his shifts to prevent criminal activities such as burglaries, vandalism, and thefts; (6) he did not recognize the vehicle from prior patrolling of the area; (7) he thought it was suspicious that the car had stopped in the parking lot, on a side of the building away from its main entrance, at that hour and that "nobody exited the vehicle" although the car had been parked for "around a minute"; and (8) based on his training and two years of experience with the Morris Police Department, the conduct he observed indicated "potentially criminal activity"—specifically that the driver of the vehicle could be "watching a business in preparation to conduct a burglary or theft."

Because Corporal Brundage's experience, general knowledge, and observations are all relevant in determining the reasonableness and constitutionality of any seizure that may

have occurred, *see Klamar*, 823 N.W.2d at 691, we conclude that the district court did not abuse its discretion by finding that these circumstances led Corporal Brundage to reasonably infer that criminal activity may have been afoot. *See Olmscheid v. Comm'r of Pub. Safety*, 412 N.W.2d 41, 43 (Minn. App. 1987) (concluding that an officer had an objective and particularized basis to support an investigatory seizure when the officer noted a vehicle's presence on a dead-end road in the early morning hours, in a commercial area with no residences, and knew of prior thefts in the same area); *Thomeczek v. Comm'r of Pub. Safety*, 364 N.W.2d 471, 472 (Minn. App. 1985) (concluding that a reasonable, articulable suspicion existed when a car was "parked near an empty lot late in the evening" with the engine running and the lights on in an area "where a burglary, vandalism or theft might occur."). Although Corporal Brundage did not suspect Marczak of driving under the influence of alcohol until after initiating the stop, he only needed a reasonable articulable suspicion of criminal activity. *See State v. Johnson*, 645 N.W.2d 505, 508 (Minn. App. 2002).

But Marczak argues that Corporal Brundage's primary reason for the seizure was "vague and speculative." Marczak asserts that, absent complaints of criminal activity, an officer's seizure runs the risk of being too speculative and thus unconstitutional. Corporal Brundage had not received any complaints about crime in the area. Marczak thus contends that any theories of possible criminal intent were "pure speculation." Marczak further notes that there were no recent reports of vandalism or burglary in the area, so his behavior was not suspicious or alarming.

Marczak, however, misapplies the reasonable, articulable suspicion standard. Based on the totality of the circumstances, law-abiding behavior can still support an inference of a reasonable, articulable suspicion that criminal activity may be afoot. *Reid v. Georgia*, 448 U.S. 438, 441, 100 S. Ct. 2752, 2754 (1980). Additionally, the fact that Corporal Brundage had not received any complaints of recent history of criminal activity in the area does not sway our analysis because an activity that might not otherwise be suspicious can become suspicious when it occurs in an area generally vulnerable to criminal activity. *See Thomeczek*, 364 N.W.2d at 472. We therefore conclude that, even if Corporal Brundage seized Marczak, he had a reasonable, articulable suspicion to do so.

Affirmed.