STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0311

State of Minnesota,
Respondent,

vs.

Demarco Dante Wilson,
Appellant.

Filed December 27, 2021
Affirmed
Kirk, Judge[*]

Hennepin County District Court
File No. 27-CR-20-8885

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Jesson, Judge; and Kirk, Judge.

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

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant Demarco Dante Wilson appeals his conviction of fifth-degree drug possession, arguing that the district court erred by denying his pretrial motion to suppress the evidence based on the district court's conclusions that (1) the emergency exception to the warrant requirement applied, and (2) the police acted within the emergency exception when opening his car door. Because we see no error in the denial of the motion to suppress, we affirm.

FACTS

Just after midnight on April 7, 2020, two Brooklyn Center police officers, Officer Gauldin and Sergeant Peterson, responded to a 911 call reporting that a person was passed out behind the wheel of a running car at a gas station. The officers arrived on the scene and parked their squad cars on either side of Wilson's car "to prevent him from driving away in case he wakes up." Officer Gauldin testified that when he drove into the gas station parking lot his high beams shined in Wilson's face and that the gas station canopy lights above Wilson's car were on. Sergeant Peterson testified that after looking in the interior of Wilson's car with a flashlight he couldn't see anything that would indicate what was going on inside the car. Sergeant Peterson testified that the car was running while in park and Wilson did not wake up when the flashlight was shone in the car.

Officer Gauldin approached Wilson's vehicle and opened the driver-side door. Officer Gauldin testified he opened the door to determine whether there was a "medical emergency or if [Wilson] was under the influence of some sort of a drug or alcohol due to

him being passed out and not responsive to the light." After opening the door, Officer Gauldin "immediately located" two baggies of white powder in the driver-side door; the content of these baggies was later identified as cocaine. Officer Gauldin arrested Wilson when he observed Wilson was awake and no longer believed Wilson had a medical emergency.

Wilson was charged with felony fifth-degree drug possession under Minn. Stat. § 152.025, subd. 2(1) (2018). Wilson motioned to have the drugs suppressed, but the district court denied the motion after an evidentiary hearing. The district court concluded that the emergency exception to the warrant requirement "justified [the officers] initial approach of [d]efendant to determine whether he needed medical assistance." The district court also found that the plain view doctrine applied to the seizure of the cocaine because Officer Gauldin "immediately observed two baggies of what he believed, in his training and experience, was cocaine inside the door."

Wilson waived a jury trial and stipulated to the prosecution's case. The district court found Wilson guilty of fifth-degree drug possession in violation of Minn. Stat. § 152.025, subd. 2(1). Wilson appealed.

DECISION

When reviewing a pretrial order on a motion to suppress, this court applies a clearly erroneous standard of review to factual findings and a de novo standard of review to conclusions of law. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

The United States and Minnesota Constitutions protect against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1 § 10. Warrantless

seizures are "presumptively unreasonable unless one of a few specifically established and well-delineated exceptions applies." *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012) (quotation omitted). "In determining whether a seizure has occurred, the court determines 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). An exception to this rule applies in emergency situations. *Id.* at 23. "Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid." *Id*. (quoting *Mincey v. Arizona*, 437 U.S. 385, 392 (1978).

Here, the parties agree that the officers seized Wilson when they parked their squad cars in a way that prevented Wilson from leaving. The district court, however, found the emergency exception applied to this situation because the officers seized Wilson with the intent "to determine whether he needed medical assistance." Wilson argues the district court erred in its factual findings supporting the application of the emergency exception because Sergeant Peterson waited for Officer Gauldin before approaching the vehicle; Officer Gauldin's testimony about Wilson being nonreactive to the squad car high-beams is inaccurate; and Officer Gauldin did not "inquire into Wilson's wellbeing as would be expected if he were truly concerned." These facts, Wilson argues, show that the emergency exception did not apply.

"Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred." *State v. Andersen*¸784 N.W.2d

320, 334 (Minn. 2010). The district court found that "[u]pon review of all the circumstances of the encounter, the [c]ourt finds that Officer Gauldin opened the driver's door to check on [d]efendant's welfare and that he was justified in doing so." In making this finding, the district court credited Sergeant Peterson's testimony about waiting for Officer Gauldin before approaching Wilson because "sometimes slumpers fight when they wake up, and he wanted to ensure everyone's safety."[1] The district court also noted that Officer Gauldin "loudly said 'hello'" after opening the car door and before he saw the cocaine.

Wilson is correct in noting the body camera footage shows the headlights of Officer Gauldin's squad car were not on when he pulled into the gas station and thus Officer Gauldin's testimony about being concerned about the lack of reaction to the headlights is incorrect. Both officers, however, used their flashlights to investigate the car to try to determine the nature of the situation. In considering all the evidence, we are not left with a firm conviction that a mistake occurred.

Wilson next argues that Officer Gauldin exceeded the scope of the emergency exception by opening the car door without first knocking on the glass. Minnesota caselaw has analyzed situations when officers approached parked vehicles with sleeping or unconscious drivers behind the wheel without reaching the conclusion the scope of the emergency exception was exceeded. *See Overvig v. Comm'r of Pub. Safety*, 730 N.W.2d 789, 792-93 (Minn. App. 2007), rev. denied (Minn. Aug. 7, 2007); *see also State v. Volkman*, 675 N.W.2d 337, 341-42 (Minn. App. 2004). In *Lopez*, the court held it was

[1] Police refer to individuals who are unconscious behind the wheel of a car as "slumpers."

proper to perform a welfare check on a person who was asleep or unconscious behind the wheel in a parking lot. 698 N.W.2d at 23-24. In *Overvig*, *Volkman*, and *Lopez*, the factual scenario differed from this case because in each of those cases the officer "tapped" or "pounded" on the window before opening the door. *Overvig*, 730 N.W.2d at 790; *Volkman*, 675 N.W.2d at 339; *Lopez*, 698 N.W.2d at 21. Wilson argues that attempting to rouse him in this way was required before opening the door because it was a "less intrusive means." However, as the district court concluded, "there is no general requirement that officers must perform certain minimal investigative steps prior to opening the car door."

Given the support in the record for the district court's factual finding that Officer Gauldin "opened the driver's door to check on [d]efendant's welfare," we do not find any clear error. The district court notes that no evidence is present which suggests "Officer Gauldin opened the driver's door to search for incriminating evidence." The district court also relied on the factual finding that Officer Gauldin shined his flashlight in Wilson's face for about two seconds. Officer Gauldin and Sergeant Peterson took reasonable steps to rouse Wilson before opening the door. Because the record supports the conclusion that the officers opened Wilson's car door to check on his welfare, the officers did not exceed the scope of the emergency exception.[2]

Affirmed.

[2] Wilson also argues for the first time on appeal that the state failed to establish the cocaine was plainly visible in the driver-side door when it was seized. Because we do not consider issues raised for the first time on appeal, we do not reach a decision on this issue. *See State v. Roby*, 463 N.W.2d 506, 508 (Minn. 1990).