This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0231

State of Minnesota,
Respondent,

vs.

Mandy Marie Brown,
Appellant.

Filed January 24, 2022
Affirmed
Reilly, Judge

Hennepin County District Court
File No. 27-CR-19-11564

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

James R. Rowader, Jr., Minneapolis City Attorney, Amy J. Tripp-Steiner, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

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

Adam G. Chandler, Brayanna J. Bergstrom, Taft Stettinius & Hollister, LLP, Special Assistant Public Defenders, Minneapolis, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

REILLY, Judge

In this direct appeal from a final judgment of conviction for driving while impaired, appellant challenges the district court's denial of her pretrial motion to suppress evidence.

She argues that the officer lacked reasonable, articulable suspicion of criminal activity to initiate the traffic stop that led to her arrest. Because we conclude that the stop was supported by reasonable suspicion, we affirm.

FACTS

In the early morning hours of May 6, 2019, appellant Mandy Marie Brown was driving in Minneapolis when she was stopped by a Hennepin County sheriff's deputy. As the deputy spoke with Brown, he noticed signs of impairment, administered field sobriety tests, and arrested her on suspicion of driving while impaired (DWI). Respondent State of Minnesota later charged Brown with three counts: DWI—operating a motor vehicle while under the influence of alcohol, DWI—operating a motor vehicle with an alcohol concentration of 0.08 within two hours, and careless driving.

Brown moved to suppress all evidence obtained during the traffic stop, arguing that the stop violated her constitutional right against unreasonable searches and seizures. Following an evidentiary hearing, the district court denied Brown's motion to suppress. Brown stipulated to the state's case, and the district court found her guilty on all three counts. The district court sentenced Brown on the first count for driving while impaired. This appeal follows.

DECISION

Brown challenges the district court's order denying her motion to suppress evidence. When reviewing a pretrial order on a motion to suppress, we review the district court's factual findings for clear error and its legal conclusions de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). We independently review the facts to determine

whether the district court erred as a matter of law by not suppressing the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004).

The United States and Minnesota Constitutions protect an individual's right against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A traffic stop is considered a seizure like a *Terry* investigatory stop. *Askerooth*, 681 N.W.2d at 359 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). Under the principles of *Terry*, an officer may "stop and temporarily seize a person to investigate that person for criminal wrongdoing if the officer reasonably suspects that person of criminal activity." *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (quotation omitted).

For a stop to be supported by reasonable suspicion, there must be "specific, articulable facts" showing that the officer "had a particularized and objective basis for suspecting the seized person of criminal activity." *Id.* at 842-43 (quotations omitted). This court considers the totality of the circumstances when determining whether police had reasonable suspicion. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). The standard for reasonable suspicion is "not high," but it requires more than "an inchoate and unparticularized suspicion or hunch." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotations omitted). This standard is satisfied when the 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.* (quotation omitted). If a seizure is not supported by reasonable suspicion, all evidence obtained because of the seizure must be suppressed. *Diede*, 795 N.W.2d at 842.

Here, the district court determined that the deputy had reasonable, articulable suspicion that Brown may have been involved in criminal activity, based on the deputy's testimony at the hearing about the following circumstances. At 2:46 a.m., the deputy was on routine patrol, driving along Washington Avenue in Minneapolis, when he saw Brown's car pull onto the road in front of him. The car was somewhere between 50 and 150 feet in front of the deputy's squad car, and there were other cars between the two vehicles. The car "turned immediately right at the next available opportunity in between a couple of buildings that appeared closed for the day." The deputy then observed the car turn left into an area behind a warehouse. The deputy knew that there were not many connecting streets behind the warehouse and there were no normal businesses open at that time of night.

After seeing the car go behind the warehouse, the deputy turned right at the next available street and waited to see if the car would keep driving and reappear on the other side of the warehouse. When the car did not reappear, the deputy drove behind the warehouse and spotted the car there. The car was parked behind the warehouse "in an odd manner"—"in the middle of an open area by a loading dock and not lined up with anything else." The warehouse was closed, and the area was dark; the deputy did not see any apparent "legitimate business needs" there. The deputy saw Brown sitting in the car and looking at her phone. At that point, the deputy activated his emergency lights and approached the car.[1]

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[1] The district court determined, and the parties agree, that Brown was seized for investigatory purposes when the deputy activated his lights before approaching the car. We agree that the seizure occurred at that moment. *See State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (recognizing that "a person has been seized if in view of all the

We conclude that these circumstances provided reasonable, articulable suspicion for the deputy to seize Brown for purposes of an investigatory stop. Brown's behavior in driving off the main road, going behind a closed warehouse, and remaining parked there in the middle of the night, with no apparent legitimate purpose for being there, reasonably gave rise to the inference that she may have been involved in some sort of criminal activity.

Two cases from this court shed light on this issue. In *Thomeczek v. Commissioner of Public Safety*, the officer observed the defendant parked in an empty lot after 11:00 p.m., with the car running and the headlights on, "in an area undergoing construction, where a burglary, vandalism or theft might occur." 364 N.W.2d 471, 472 (Minn. App. 1985). This court determined that the officer had reasonable suspicion that the defendant may have been involved in unlawful activity and that the stop was therefore legal. *Id.* Similarly, in *Olmscheid v. Commissioner of Public Safety*, the officer stopped the defendant, who was driving along a dead-end road at 1:30 a.m., behind a car dealership that had a history of property theft. 412 N.W.2d 41, 42 (Minn. App. 1987), *rev. denied* (Minn. Nov. 6, 1987). This court reasoned that "[t]he officer's knowledge of previous theft from [the car dealership] and the presence of the vehicle in the early morning hours in a commercial area with no residences on a road that does not connect to another roadway provide an objective

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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. Lopez*, 698 N.W.2d 18, 22 (Minn. App. 2005) (holding that defendant was seized when officer activated squad car's lights and pulled into parking lot where defendant was parked in car).

and particularized basis" for the officer to suspect that criminal activity was afoot. *Id.* at 43.

The facts here are like those in *Thomeczek* and *Olmscheid*. It was the middle of the night, and the deputy saw Brown drive behind a warehouse to an empty area where all lights were off and no businesses were open. The deputy did not start the traffic stop when Brown turned behind the warehouse but investigated further only after she did not reappear within a few minutes. Based on the time of night, the lack of any open businesses, and the unusual manner in which Brown was parked, the deputy had an objective basis to reasonably believe that Brown had no legitimate purpose for being there. Like the behavior of the drivers in *Thomeczek* and *Olmscheid*, Brown's parking behind a closed business in the middle of the night reasonably caused the deputy to believe that she could be there to engage in criminal activity.[2]

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[2] The state also argues that reasonable suspicion was supported based on Brown's "evasive behavior." The supreme court has held that an officer may have reasonable suspicion to stop a driver "if the driver's conduct is such that the officer reasonably infers that the driver is deliberately trying to evade the officer." *State v. Johnson*, 444 N.W.2d 824, 827 (Minn. 1989). We agree with Brown that her driving conduct did not rise to the level of evasive behavior. In *Johnson*, the supreme court held that the officer had reasonable suspicion to stop the defendant when the defendant made eye contact with the officer, immediately turned onto a side road and seemed to disappear, and then emerged from the same road less than a minute later. *Id.* at 825, 827. Similarly, the supreme court held that there was reasonable suspicion based on evasive conduct in *State v. Petrick*, 527 N.W.2d 87, 89 (Minn. 1995). In that case, just after 1:00 a.m., the officer observed the defendant pass him in the opposite direction, and as the officer made a U-turn, the defendant turned into the driveway of the first house available, shut off the car's lights, and continued to drive up the driveway. *Petrick*, 527 N.W.2d at 87. In both cases, there was an objective reason to suspect that the defendant had seen the officer and was trying to avoid him—in *Johnson*, based on the defendant making eye contact with the officer, 444 N.W.2d at 827, and in *Petrick*, based on the defendant immediately turning off the car's headlights as soon as he drove onto a driveway, 527 N.W.2d at 87-88.

Brown's arguments do not convince us otherwise. Brown points to the deputy's testimony that there were apartment buildings nearby and argues that she could have been parking to go into an apartment building. But the deputy testified that Brown was parked in the middle of the lot and not lined up with anything, rather than in a parking space or alongside the building. The way Brown was parked did not suggest that she was there to lawfully enter an apartment complex.

Brown also maintains that there was no evidence of specific concerns of burglaries or recent crimes committed in the area. But the reasonable-suspicion standard does not necessarily require that the driver be in an area where crimes have occurred. In *Thomeczek*, this court determined that there was reasonable suspicion when the defendant was parked in an empty lot in an area "where a burglary, vandalism or theft *might* occur." 364 N.W.2d at 472 (emphasis added). Similarly, an empty parking lot behind closed businesses is generally vulnerable to criminal activity, especially at night. And reasonable suspicion may be based on conduct consistent with innocent activity. *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998).

Here, the supposedly evasive behavior was that Brown pulled onto the main road in front of the deputy, turned onto the nearest side road, and drove behind a closed warehouse. Unlike *Johnson* and *Petrick*, there is no evidence in the record suggesting that Brown might have known that the squad car was following behind her. It was dark outside, and the deputy testified that there were other cars between the squad car and Brown's car. The circumstances do not give rise to the reasonable inference that Brown was trying to evade the deputy.

For these reasons, we conclude that the deputy had reasonable, articulable suspicion to initiate the traffic stop. The district court did not err by denying Brown's motion to suppress.

Affirmed.