STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0603

State of Minnesota,
Respondent,

vs.

Kayla Catelyn Waltz,
Appellant.

Filed March 21, 2022
Affirmed
Gaïtas, Judge

Chippewa County District Court
File No. 12-CR-19-515

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

Janice Nelson, Montevideo City Attorney, Matthew Haugen, Assistant City Attorney, Montevideo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Reilly, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

In this appeal from her conviction for misdemeanor driving while impaired (DWI), appellant Kayla Catelyn Waltz argues that the district court erred in denying her motion to suppress the evidence and her statements to the police because the police unlawfully

expanded a welfare check into a criminal investigation and interrogated her without providing a *Miranda* warning. We affirm.

FACTS[1]

At approximately 11:00 p.m. on June 7, 2019, Montevideo police received a report that a female driver was passed out in a running car in a convenience store parking lot. Three officers responded to the call. The first officer to arrive, a police sergeant, parked his patrol car next to the car so as not to block it. He approached the car and, after some effort, awoke the unconscious driver—later identified as Waltz—by knocking on the window and shining his flashlight into her eyes. While standing next to the car, the sergeant smelled a potent odor of fresh marijuana. Once roused, Waltz rolled down the car window. The sergeant observed an even more intense odor of marijuana mixed with an odor of perfume or air freshener. He explained to Waltz that he was checking on her welfare, and she responded that she was waiting for a friend. The sergeant requested identification, and Waltz produced a valid Minnesota driver's license. During this brief interaction, the sergeant did not observe anything unusual about Waltz's speech or appearance. He instructed her to "hang out" in her car while he checked her driver's license.

Two other officers arrived together in a second patrol car. The sergeant asked them whether they could smell the marijuana odor emanating from Waltz's car. They approached the car and confirmed that there was a strong marijuana smell. One of the officers asked Waltz how she was doing and what she was doing.

[1] The facts are derived from the testimony and exhibits presented at the hearing on Waltz's suppression motions.

The sergeant instructed the officers to ask Waltz to exit the car and to search it to ascertain "why the vehicle smell[ed] like weed." One officer asked Waltz to step out of the car, and she complied. Then, in conversational tones, the two officers briefly inquired about the marijuana smell. One officer asked Waltz whether they could search her car, and she consented.[2] As the officers searched the car, the sergeant explained to Waltz, "We're not trying to harass you or anything, you've just gotta understand that your vehicle reeks of marijuana, so whether you revoke permission or not, we can still search it."

The sergeant asked Waltz whether she had been using marijuana, and she admitted to smoking a blunt[3] a few hours before. Suspecting that Waltz was under the influence of marijuana or a controlled substance, the sergeant asked Waltz to perform some field sobriety tests and conducted a preliminary breath test, which revealed a zero alcohol concentration. The sergeant arrested Waltz based on suspicion that she had been driving while impaired and provided her with a *Miranda* warning.

Before handcuffing Waltz, the sergeant asked whether she had anything harmful on her person, and Waltz produced two smoking devices, one of which contained suspected marijuana residue. During the search of Waltz's car, the officers found a plastic grocery bag containing approximately ten grams of marijuana, an open cigarillo pack, and a sandwich bag filled with what appeared to be tobacco from the cigarillos.

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[2] The discussion that occurred between the time Waltz was asked to exit her car and when she consented to the search was approximately a minute and a half in duration.

[3] A blunt is a cigarillo that contains marijuana instead of tobacco.

At the Chippewa County jail, the police obtained a search warrant to take a blood sample from Waltz for chemical testing. Waltz's blood showed indicators of marijuana use.

Respondent State of Minnesota charged Waltz with three misdemeanors: operating a motor vehicle while under the influence of a controlled substance, Minn. Stat. § 169A.20, subd. 1(2) (2018); possession of marijuana in a motor vehicle, Minn. Stat. § 152.027, subd. 3 (2018); and possession of drug paraphernalia, Minn. Stat. § 152.092(b) (2018). Waltz then moved to suppress the evidence of marijuana that police seized from her car and her admissions to the police that she had smoked marijuana. Following an evidentiary hearing, the district court denied Waltz's motions. Waltz then stipulated to the prosecution's case pursuant to Minnesota Rule of Criminal Procedure 26.01, subdivision 4, in order to obtain appellate review of the district court's order denying suppression. The district court found her guilty of operating a motor vehicle while under the influence of a controlled substance, Minn. Stat. § 169A.20, subd. 1(2), and sentenced her to 90 days in jail, staying the execution of the sentence for one year.

Waltz appeals.

DECISION

Waltz argues that the police violated her federal and state constitutional rights during the encounter in the convenience store parking lot. She contends that they had no basis to detain her for a criminal investigation or to search her car once they determined that she was not in distress. And she asserts that the police unlawfully interrogated her about her marijuana use without providing a *Miranda* warning. Waltz argues that these

constitutional violations require suppression of the drug evidence found in her car and on her person, the evidence of her impairment, her statements to the police, and any evidence obtained as a result of her statements.

I. The police did not violate Waltz's constitutional rights by detaining her to investigate suspected criminal activity or by searching her car for drugs.

In considering a challenge to a district court's pretrial ruling on a motion to suppress evidence, appellate courts review factual findings for clear error and legal conclusions de novo. *State v. Diede*, 795 N.W.2d 836, 849 (Minn. 2011). If the facts are not in dispute—as is the case here—appellate courts apply de novo review to determine whether an unreasonable seizure occurred. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

The Fourth Amendment of the United States Constitution, and article 1, section 10 of the Minnesota Constitution, prohibit unreasonable searches and seizures. Warrantless searches and seizures are unreasonable under both the state and federal constitutions unless a recognized warrant exception applies. *Coolidge v. New Hampshire*, 403 U.S. 443, 474 (1971); *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). The state must show that an exception to the warrant requirement applies. *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003).

Waltz argues that the officers violated her state and federal constitutional rights by seizing her without justification and then searching her car. She does not challenge the officers' authority for the initial interaction, which she characterizes as a "welfare check." *See State v. Klamar*, 823 N.W.2d 687, 693 (Minn. App. 2012) (holding that a seizure does not occur when an officer approaches a stopped vehicle for a welfare check). But she

contends that the welfare check escalated into a seizure when the officers asked her to exit her car and questioned her about marijuana use. Moreover, she argues, the police unlawfully expanded the scope of the seizure by searching her car.

We begin our analysis with a brief discussion of seizures. Not all encounters between people and the police are seizures. *State v. Cripps*, 533 N.W.2d 388, 390 (Minn. 1995); *Klamar*, 823 N.W.2d at 692. For example, when an officer walks up to a parked car and speaks with the driver, there is no seizure. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980). "[A] seizure occurs when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Cripps*, 533 N.W.2d at 391 (quotation omitted). In considering whether there was a seizure, Minnesota courts use the *Mendenhall-Royer* test: "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."[4] *Id.*; *see Florida v. Royer*, 460 U.S. 491, 497-98 (1983); *United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

In some circumstances, the police may seize an individual without a search warrant. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). One exception to the warrant requirement permits limited investigatory seizures. *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004).

[4] In *California v. Hodari D.*, 499 U.S. 621, 626 (1991), the United States Supreme Court held that a seizure occurs under the Fourth Amendment when the police use physical force or a person submits to a police show of authority. Our supreme court declined to follow the *Hodari D.* holding, concluding that the Minnesota Constitution affords more protection than the federal constitution. *In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993).

Under this exception, a police officer may briefly detain an individual when the officer "has a reasonable, articulable suspicion that criminal activity is afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)) (citing *Terry*, 392 U.S. at 30). But an investigatory detention "may become invalid if it becomes 'intolerable' in its 'intensity or scope.'" *Askerooth*, 681 N.W.2d at 364 (quoting *Terry*, 392 U.S. at 17-18). Thus, each subsequent intrusion "must be strictly tied to and justified by the circumstances that rendered the initiation of the investigation permissible." *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). And to expand the scope of an investigatory seizure, the police must have independent probable cause or a reasonable suspicion of criminal activity sufficient to justify the subsequent intrusion. *Id.* (citing *Terry*, 392 U.S. at 20-21).

Here, the district court concluded, and we agree, that the police had a reasonable and articulable suspicion of criminal activity that justified a limited investigatory detention. Waltz was sleeping in a running car in a public place at 11:00 p.m. When the sergeant approached the car, he smelled a strong odor of fresh marijuana. Waltz was difficult to rouse; the sergeant was required to bang on the car window and shine his flashlight in her eyes. The marijuana smell became more intense when Waltz finally rolled her window down. And the two other officers who arrived to assist with the investigation confirmed that they could smell marijuana even while standing three feet away from Waltz's car. Given these facts, the officers had reason to suspect that Waltz was driving while impaired and that she possessed marijuana in a motor vehicle. Either of these suspicions provided a basis for an investigatory detention. *See State v. Doren*, 654 N.W.2d 137, 142 (Minn. App.

2002) (stating that a car passenger's "extraordinary nervousness," the smell of burned marijuana emanating from the passenger's location, and the passenger's appearance of being under the influence together provide a reasonable articulable suspicion of criminal activity), *rev. denied* (Minn. Feb. 26, 2003).

Waltz argues that even if the initial seizure was valid, the officers unlawfully expanded the scope of the stop by searching her car. The state responds that the officers' actions were permissible under another exception to the warrant requirement—the automobile exception.[5]

The automobile exception allows police to search a vehicle, including closed containers, 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). Determining whether there is probable cause requires an objective inquiry that evaluates the totality of the circumstances in a particular case. *Id.* These circumstances include the reasonable inferences that law enforcement officers may make based on their training and experience. *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011).

The state points out that "[t]he detection of odors alone, which trained police officers can identify as being illicit, constitutes probable cause to search automobiles for further evidence of crime." *State v. Pierce*, 347 N.W.2d 829, 833 (Minn. App. 1984); *see*

[5] Although the evidence shows that the officers asked Waltz if they could search the car and she responded affirmatively, the state has never argued that Waltz consented to the search.

also State v. Wicklund, 205 N.W.2d 509, 511 (Minn. 1973). And the state notes that under current Minnesota law, the smell of marijuana provides probable cause for a vehicle search. *See State v. Schultz*, 271 N.W.2d 836, 837 (Minn. 1978) (stating that the automobile exception applies when an officer smells marijuana emanating from a car).

While we do not disagree with the state's summary of the law, we note that the factual circumstances here included more than an odor of marijuana. Again, Waltz was found soundly sleeping in a running car near midnight. The car was parked in a convenience store parking lot. When finally awakened, Waltz said that she was meeting someone. Three trained police officers smelled a strong odor of marijuana—including fresh marijuana—coming from the car. And Waltz admitted to smoking marijuana in the car earlier. Based on all of these facts, the officers reasonably believed that the car would contain contraband. Because the officers had probable cause to search, their search was lawful under the automobile exception to the warrant requirement.

The investigatory stop and search of Waltz's car, which were both justified by exceptions to the constitutional warrant requirement, did not violate Waltz's constitutional rights. Thus, the district court did not err in denying her motion to suppress the evidence.

II. No *Miranda* warning was required before Waltz's formal arrest because there was no custodial interrogation.

Whether police questioning of a suspect was a custodial interrogation requiring a *Miranda* warning is a mixed question of law and fact that appellate courts review de novo. *State v. Sterling*, 834 N.W.2d 162, 167-68 (Minn. 2013). When the district court applied the proper legal standard, the appellate court gives considerable deference to its resolution

of this fact-specific issue. *Id.* at 168; *see also State v. Horst*, 880 N.W.2d 24, 31 (Minn. 2016) (holding same).

The requirement for a *Miranda* warning protects an individual's Fifth Amendment right against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966). If police fail to provide a *Miranda* warning at the outset of a custodial interrogation, a suspect's statements made during the interrogation are generally inadmissible. *Id.* at 479.

An interrogation is defined as "express questioning or any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response." *State v. Heinonen*, 909 N.W.2d 584, 589 (Minn. 2018) (quotations omitted). And a "custodial interrogation" occurs when "questioning [is] initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his [or her] freedom of action in any significant way," *Miranda*, 384 U.S. at 444, or "if, based on all the surrounding circumstances, a reasonable person under the circumstances would believe that he or she was in police custody of the degree associated with formal arrest." *State v. Vue*, 797 N.W.2d 5, 10-11 (Minn. 2011) (quotation omitted); *see also State v. Scruggs*, 822 N.W.2d 631, 637 (Minn. 2012).

To determine if a person was in custody for the purpose of the *Miranda* requirement, courts consider multiple factors, including whether the questioning occurred at the police station, the individual's freedom of movement was restrained, the individual made a highly incriminating statement, there were multiple police present, and the police pointed a gun at the suspect. *Scruggs*, 822 N.W.2d at 637. Factors that suggest a person was not in custody include brief questioning, a nonthreatening environment, questioning at the

suspect's home, explicit statements that the suspect is not under arrest, police allowing a suspect to leave after a statement, and police permitting a suspect to make phone calls. *Id.*

The district court determined that the officers interrogated Waltz by asking her about the marijuana smell in her car, inquiring whether there was marijuana in the car, asking whether she had been smoking marijuana, and questioning how much marijuana she had used. But after considering the relevant factors, the district court concluded that Waltz had not been in custody. Specifically, the district court found that Waltz was first questioned while she was in her car; she was not questioned at the police station; her freedom was not restrained to an extent suggesting she was under arrest; the police did not block her car with their patrol vehicles; the officers did not use their emergency lights; she was not handcuffed, pat-searched, or placed in a patrol vehicle before the questioning; the questioning was very brief; the officers spoke to her in a nonthreatening manner, and one of them even apologized for the investigation; the officers never touched their weapons; the officers told her that she was not in custody; and the officers were calm. The district court acknowledged that some factors could support a finding that Waltz was in custody—that she admitted smoking marijuana, that she was surrounded by three officers, and that the sergeant had taken her driver's license. However, it determined that those factors were "not enough to support a conclusion that she was under arrest and that a *Miranda* warning was required" because a reasonable person in her situation would not have believed that she was under arrest.

In challenging the district court's conclusion, Waltz does not argue that its factual findings are erroneous. Rather, Waltz argues that she was in custody because "[s]he was

questioned by multiple officers arriving in two squad cars about drugs in her vehicle, she was questioned away from her vehicle, and she could not leave because [the sergeant] had her [driver's license]." But the district court considered these factors and determined that, on balance, the other factors indicated that Waltz was not in custody. Because the district court applied the correct legal standard and carefully weighed the relevant factors, we give its determination considerable deference. *See Sterling*, 834 N.W.2d at 168 ("We grant considerable, but not unlimited, deference to a [district] court's fact-specific resolution of [an issue regarding custody and the need for a *Miranda* warning] when the proper legal standard is applied." (quotations omitted)).

Waltz also argues that the supreme court's decision in *State v. Malik*, 552 N.W.2d 730, 731 (Minn. 1996), compels the conclusion that she was in custody when questioned by the officers. In *Malik*, the supreme court held that an investigatory stop became the functional equivalent of a custodial arrest when police patted down the suspect's clothing, locked him in a squad car, and asked him about drugs and alcohol in his car. 552 N.W.2d at 731.[6] But the circumstances in *Malik* were quite different. There, the suspect had a revoked driver's license and therefore was unable to independently leave the scene of the traffic stop. *Id.* And the suspect was confined to the back of the officer's patrol car. *Id.*

[6] Waltz also cites a nonprecedential decision of this court. This court is not bound by its nonprecedential opinions but may consider them as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions and order opinions are not binding authority except as law of the case, res judicata, or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.") We have reviewed the decision cited by Waltz and do not find it to be persuasive because the factual circumstances in that case were dramatically different than those here.

Here, as the district court found, Waltz was not confined and the encounter with the officers was brief and nonthreatening. Although the sergeant did take Waltz's driver's license, this is a routine occurrence that alone is insufficient to convert an encounter between a motorist and the police into the functional equivalent of a custodial arrest. *See* Minn. Stat. § 171.08 (2020) (stating that each person operating a motor vehicle must be prepared to display a driver's license to a police officer); *Scruggs*, 822 N.W.2d at 637 (listing six factors suggesting a person is in custody).

Based on our independent review of the record, we agree with the district court that Waltz was not in custody before she was formally arrested. Because she was not in custody, the officers' questions did not constitute a custodial interrogation requiring a *Miranda* warning. Thus, the district court did not err in denying Waltz's motion to suppress her statements and any evidence derived from those statements.

Affirmed.