STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0920

State of Minnesota,
Respondent,

vs.

Todd Richard Kalis,
Appellant.

Filed May 9, 2022
Affirmed
Klaphake, Judge[*]

Redwood County District Court
File No. 64-CR-20-525

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

Jenna M. Peterson, Redwood County Attorney, Redwood Falls, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, William C. Lundy, Certified Student Attorney, Slayton, Minnesota (for respondent)

Lauren J. Campoli, The Law Office of Lauren Campoli, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Klaphake, Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant Todd Richard Kalis challenges his conviction for giving a false name to a peace officer, arguing that the district court erred by denying his motion to suppress evidence because (1) the officer lacked reasonable suspicion to seize him, and (2) he gave a false name when he was subject to a custodial interrogation for which he did not receive a *Miranda* warning. Because the officer had reasonable suspicion that Kalis was engaged in criminal activity, and Kalis was not subject to a custodial interrogation when he provided the false name, we affirm.

DECISION

When reviewing pretrial orders on motions to suppress evidence, we review the district court's factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). We independently review undisputed facts and determine, as a matter of law, whether the evidence must be suppressed. *Id.*

I. Reasonable Suspicion

Kalis contends that the false name he gave to a police officer must be suppressed because he gave it when he was subject to a seizure that lacked reasonable suspicion. The United States and Minnesota Constitutions protect "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Evidence obtained by the police as the result of a seizure without reasonable suspicion must be suppressed. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011).

Under principles established by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968), a police 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." *Id.* (quotation omitted). "Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate . . . that he or she had a particularized and objective basis for suspecting the seized person of criminal activity." *Id.* at 842-43 (quotations omitted). The reasonable-suspicion 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." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). The standard is not high, but it requires more than an unparticularized hunch. *Id.*

An officer of the Lower Sioux Tribal Police Department testified, and video from her body camera was submitted at the omnibus hearing. It was established that Kalis was a guest at a casino on June 24, 2020, and shortly after midnight, the officer responded to a call at the casino on reports that a "suspicious male" was taking pictures in the parking lot. The officer spoke with the security supervisor who explained that his security officers had seen a man in the parking lot who appeared to be taking pictures of vehicles and to be tampering with a vehicle. The supervisor further informed the officer that security had confronted the man and told him to stop taking pictures, and the man came inside. Shortly afterward, security officers saw the man appearing to take pictures inside the hotel lobby, and they once again told him to stop. The security supervisor then contacted the police.

When the officer arrived at the casino and entered the hotel lobby, a casino security officer pointed out Kalis as the suspicious man. Kalis was leaving the reception desk at that time. The officer approached Kalis, identified herself, and asked to speak with him. Kalis said that he did not want to talk and walked away from the officer. As Kalis continued to walk away, the officer repeatedly ordered him to stop. She said that Kalis could either stop and talk to her, or she would put him in her squad car. Kalis finally stopped in a hallway near the elevator area of the lobby.

The officer informed Kalis that she had been called to the casino because of suspicious activity; specifically, that someone had been taking pictures of vehicles in the parking lot and of employees. Kalis denied that he had engaged in that activity. The officer accused Kalis of lying and asked for his ID. Kalis said that he did not have his ID with him. The officer then asked Kalis for his first name. Kalis initially refused to provide his name, but upon further pressure from the officer, he said that his first name was "Trong." The officer believed that Kalis was lying, and she continued to ask for his name.

After Kalis repeatedly refused to give his full name or to identify himself, the officer started to escort him to her squad car. Kalis resisted and tried to take out his cell phone, so the officer placed him in handcuffs. Once Kalis was in handcuffs, the officer obtained his wallet and found a card with his name on it. At that point, Kalis finally provided his full name. The officer eventually learned that Trong was the name of the guest who was registered to the hotel room in which Kalis was staying.

The state concedes that Kalis was subject to a seizure when he gave the false name. For the purposes of the Minnesota Constitution, "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). Because the officer told Kalis that she would put him in her squad car if he did not speak with her, Kalis was not free to terminate the encounter, and we agree that he was seized.

The officer's basis for seizing Kalis was the report from casino security that Kalis had taken pictures of vehicles in the parking lot, appeared to have tampered with a vehicle, and had taken pictures inside the hotel lobby after security had asked him to stop. We therefore must determine whether those facts provided a particularized and objective basis for the officer to have suspected Kalis of criminal activity.

Kalis emphasizes that taking pictures in a public place is not criminal conduct. He argues that, because the officer was called to investigate non-criminal behavior, she lacked a particularized and objective basis to suspect him of criminal activity. This argument ignores the officer's testimony at the omnibus hearing that casino security had reported that Kalis not only took pictures of vehicles, but also appeared to have tampered with a vehicle. Tampering with a motor vehicle is a criminal offense. *See* Minn. Stat. § 609.546(2) (2020) (stating that it is a misdemeanor to intentionally "tamper[] with or enter[] into or on a motor vehicle without the owner's permission").

In his brief, Kalis does not meaningfully address the allegation that he tampered with a motor vehicle in the parking lot. But at the omnibus hearing, Kalis questioned the officer about that claim, mentioning that she never asked Kalis about that alleged conduct and that the prosecutor did not charge him with such an offense. And during oral arguments

Kalis contended that the officer did not actually suspect him of tampering with a motor vehicle. We disagree that those facts demonstrate that the officer lacked reasonable suspicion that Kalis had tampered with a motor vehicle. Although the officer did not specifically confront Kalis about the claim that he had tampered with a vehicle, she nevertheless testified at the omnibus hearing that casino security had informed her of that activity before she questioned Kalis. Additionally, reasonable suspicion is based on the officer's knowledge at the time of the stop. *Jobe v. Comm'r of Pub. Safety*, 609 N.W.2d 919, 922 (Minn. App. 2000); *see also Terry*, 392 U.S. at 21-22 (explaining that reasonable suspicion is judged on "the facts available to the officer at the moment of the seizure"). It is therefore irrelevant that the police never uncovered any evidence that Kalis had tampered with a motor vehicle or that the state never charged him with that crime.

Even if we disregard the allegation that Kalis had tampered with a motor vehicle, it is undisputed that the officer received a report from casino security that Kalis had taken pictures of vehicles in the parking lot. A person's innocent activity can create reasonable suspicion to justify a stop. *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998). The U.S. Supreme Court has recognized that "*Terry* accepts the risk that officers may stop innocent people." *Illinois v. Wardlow*, 528 U.S. 119, 126 (2000). As such, the mere fact that taking pictures of vehicles is not a crime does not necessarily mean that the officer lacked reasonable suspicion to stop Kalis. Instead, the proper inquiry is whether Kalis's behavior led the officer to reasonably conclude that criminal activity might have been afoot. That standard is satisfied here. Taking pictures of vehicles in a casino parking lot is unusual behavior. There may be plausible, innocent explanations for that conduct, but

there are also several criminal explanations for it. For example, as the state pointed out, a person may be attempting to make false license plates modeled on real ones, looking for a vehicle to steal, or stalking someone. Moreover, security officers told Kalis to stop taking pictures in the parking lot, but shortly afterward he started taking pictures in the hotel lobby. Kalis's refusal to obey the directives of casino security heightened the suspicion that he may be engaged in criminal activity. Considering that reasonable suspicion is a low standard, Kalis's unusual behavior allowed the officer to reasonably conclude that criminal activity might have been afoot.

Kalis maintains that, even if the initial seizure was reasonable, the officer unreasonably expanded the seizure by continuing to detain him. During a stop, each incremental intrusion "must be strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quotations omitted). An intrusion not strictly tied to the circumstances that made the initial stop permissible must be supported by "at least a reasonable suspicion of additional illegal activity." *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

The officer expanded the stop when she arrested Kalis after he continually refused to identify himself. Kalis provided a false name to the officer before that point. Although Kalis had insisted that he did not take any pictures before he gave a false name, the officer did not believe him and accused him of lying. The officer was not required to end her inquiry solely because of Kalis's averments. Therefore, the officer did not expand the stop before Kalis gave a false name to her.

In sum, the officer had reasonable suspicion that Kalis was engaged in criminal activity based on the casino security's reports that Kalis had taken pictures of vehicles in the parking lot, appeared to have tampered with a motor vehicle, and continued to take pictures in the lobby after security asked him to stop. Accordingly, she was justified in stopping him and asking him to identify himself. The district court did not err by denying Kalis's motion to suppress his false name based on lack of reasonable suspicion.

II. Probable Cause

During oral argument, Kalis claimed that the officer needed probable cause to threaten to arrest him for failing to identify himself, and that the officer would not have learned his true identity or realized that he gave a false name if she had not arrested him. We disagree that the officer lacked probable cause to arrest Kalis. Probable cause to arrest exists when the police "have a reasonable belief that a certain person has committed a crime." *In re Welfare of G.M.*, 560 N.W.2d 687, 695 (Minn. 1997). After Kalis said that his first name was "Trong," the officer suggested that the name was not Kalis's actual name. Kalis then repeatedly insisted that he did not have to identify himself. That behavior—as opposed to claiming that "Trong" truly was his first name—provided the officer with a reasonable belief that Kalis's initial response was not his real first name. Therefore, the officer had probable cause that Kalis had given a false name, and it was reasonable for the officer to arrest him.

III. *Miranda* Warning

Kalis contends that the officer was required to issue a *Miranda* warning before asking for his name because he was subject to a custodial interrogation. Both the United

States and Minnesota Constitutions protect criminal defendants from being compelled "to be a witness against himself." U.S. Const. amend. V; Minn. Const. art. I, § 7. To protect the right against self-incrimination, the police must use "procedural safeguards" when a suspect is subject to a "custodial interrogation." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Those procedural safeguards include warning the suspect that he has the right to remain silent and the right to an attorney. *Id.* If the police do not provide a *Miranda* warning, then any statements the suspect makes during a custodial interrogation are inadmissible at trial. *State v. Horst*, 880 N.W.2d 24, 30 (Minn. 2016). Because the officer did not provide a *Miranda* warning, Kalis argues that his statements—including the false name he gave—must be suppressed.

The issue here is whether Kalis was subject to a custodial interrogation when the officer asked him to identify himself, thus requiring the officer to provide a *Miranda* warning. There are two prongs to this inquiry: whether the defendant was "in custody," and whether the police conducted an "interrogation." *State v. Edrozo*, 578 N.W.2d 719, 724 (Minn. 1998). When the facts are undisputed, as they are here, we review the district court's determinations on both prongs de novo. *State v. Heinonen*, 909 N.W.2d 584, 590 (Minn. 2018); *State v. Wiernasz*, 584 N.W.2d 1, 3 (Minn. 1998).

Regarding the first prong, "[a]n interrogation is custodial 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. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010) (quotation omitted). As relevant here, factors that suggest that an interrogation is custodial include officers restraining the

suspect's freedom, the presence of multiple officers, and officers pointing a gun at the suspect. *Id.* Factors that indicate that an interrogation is not custodial include the suspect's freedom to leave at any time, a nonthreatening environment, and the suspect's ability to make phone calls. *Id.* at 491-92.

Here, the officer clearly restrained Kalis's freedom. She ordered him to stop walking away from her and threatened to put him in her squad car. She also told him that he could go to jail if he did not identify himself. Additionally, the body-camera video shows that multiple security officers were positioned down the hallway and were preventing Kalis from leaving. Those circumstances demonstrate that the encounter was somewhat threatening. But even though Kalis was not free to terminate the encounter, the test "is not whether a reasonable person would believe he or she was not free to leave." *State v. Champion*, 533 N.W.2d 40, 43 (Minn. 1995). Instead, as discussed above, the test is whether a reasonable person would believe he was in police custody to the degree of a formal arrest. *Thompson*, 788 N.W.2d at 491. Here, the officer questioned Kalis in the hallway of a casino. She was the only officer who questioned him and was in the immediate area. She never drew a gun. Kalis was not placed in handcuffs or otherwise physically restrained until well after he gave a false name to the officer. Based on those circumstances, the interview did not rise to the level associated with a formal arrest. Thus, Kalis was not in custody for *Miranda* purposes when he gave a false name.

Regarding the second prong of the *Miranda* inquiry, an interrogation occurs when a suspect is subject to "either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980). The "functional equivalent" of express

questioning is "any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.* at 301 (footnote omitted). The Minnesota Supreme Court has indicated that the disclosure of a suspect's name is not incriminating testimony protected by the Fifth Amendment privilege against self-incrimination. *Evans v. State*, 788 N.W.2d 38, 45 (Minn. 2010) (briefly discussing the issue in the context of an ineffective-assistance-of-counsel claim for failure to argue a Fifth Amendment violation); *see also Hiibel v. Sixth Jud. Dist. Ct. of Nev.*, 542 U.S. 177, 191 (2004) (stating that disclosure of the suspect's name is likely "to be incriminating only in unusual circumstances"). We agree that asking a suspect to provide his name is not reasonably likely to elicit an incriminating response from the suspect. As such, Kalis was not interrogated for *Miranda* purposes when he was asked to provide his name.

In sum, Kalis was not subject to a custodial interrogation when he gave a false name to the officer. The officer therefore was not required to provide a *Miranda* warning, and Kalis's statements were admissible. The district court did not err by denying Kalis's motion to suppress.

Affirmed.