STATE OF MINNESOTA
IN COURT OF APPEALS
A11-403

State of Minnesota,
Respondent,

vs.

Jacquelyn S. Layman,
Appellant.

Filed January 23, 2012
Affirmed
Halbrooks, Judge

Ramsey County District Court
File No. 62-CR-10-2432

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges her conviction of fifth-degree possession of methamphetamine, arguing that the district court erred by not excluding evidence

obtained after police arrested her for possession of a burglary tool. Because we conclude that the police had reasonable articulable suspicion to seize appellant and probable cause to arrest her, we affirm.

FACTS

Just after midnight on April 1, 2010, Officers Joseph Reginek and Mike Dunaski were patrolling an area on the east side of St. Paul that was well known for narcotics and criminal activity. Officer Reginek turned off of Payne Avenue into the alley between Sims Avenue and York Avenue, using the spotlight on his marked squad car to further illuminate the alley. Officers Reginek and Dunaski observed appellant Jacquelyn Layman and a male companion walking toward them. When appellant and the male saw the squad car, the male took off running in the direction of a known drug house. But appellant shielded her eyes and continued to walk toward the squad car.

As the squad car approached appellant, Officer Reginek recognized her as a friend of someone he had arrested for possession of methamphetamine. Officer Reginek also noticed the glare from an item protruding from appellant's front pants pocket. As he got closer, Officer Reginek recognized the item as a lock-picking tool. Officer Reginek stopped his car and told appellant to come over, while Officer Dunaski pursued appellant's male companion. Officer Reginek asked appellant when she had last used methamphetamine. Officer Reginek also asked appellant if she was a shooter because he did not want to get stuck by a needle if he searched her. She said, "No." Appellant responded that she had last used that morning.

Officer Reginek then asked appellant why she had a lock-picking tool. Appellant hesitated and eventually said that she needed it to get into her garage. While Officer Reginek continued to question appellant, three or four more squad cars arrived. When Officer Reginek asked appellant what she was doing in the alley, she had no explanation. Officer Reginek placed her under arrest for possession of a burglary tool. He conducted a search incident to arrest and recovered "a small bindle of meth" from her right pants coin pocket.

Appellant was charged with one count of fifth-degree possession of methamphetamine, but was never charged with possession of a burglary tool. Before trial, appellant moved to suppress the methamphetamine on the grounds that Officer Reginek had neither reasonable articulable suspicion to seize her nor probable cause to arrest her. The district court denied appellant's motion. Pursuant to Minn. R. Crim. P. 26.01, subd. 4, appellant stipulated to the facts and waived her right to a jury trial. The district court found appellant guilty. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred in refusing to suppress the drugs and her statements to Officer Reginek because he did not have reasonable articulable suspicion to seize her or probable cause to arrest her. "When reviewing pretrial orders on motions to suppress evidence, we review the facts to determine whether, as a matter of law, the court erred when it failed to suppress the evidence." *State v. Flowers*, 734 N.W.2d 239, 247 (Minn. 2007). This court reviews a district court's findings of fact for

clear error, but reviews its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

I. Seizure

Because appellant stipulated to the facts, they are not in dispute. "[W]hen the facts are not in dispute, a reviewing court must determine whether a police officer's actions constitute a seizure and if the officer articulated an adequate basis for the seizure." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Appellant contends that she was seized when Officer Reginek shined his spotlight on her. "Both the Fourth Amendment to the United States Constitution and Article I, Section 10 of the Minnesota Constitution protect the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *Flowers*, 734 N.W.2d at 248 (quotation omitted). A person is seized when "objectively and on the basis of the totality of the circumstances, . . . a reasonable person in the defendant's shoes would have concluded that he or she was not free to leave." *In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993). This means that a person "was neither free to disregard the officer's questions nor free to terminate the encounter." *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). Factors that indicate a person has been seized include the threatening presence of several officers, an officer displaying a weapon, a physical touching, and the use of language or tone of voice indicating that compliance is required. *E.D.J.*, 502 N.W.2d at 781. But it is not a seizure if an officer approaches a citizen in a public place to seek voluntary cooperation. *Id.* at 782.

While appellant argues that the officer's use of a spotlight is analogous to the use of a squad car's emergency lights, we disagree. A spotlight does not objectively indicate that a person is not free to leave. When a police officer follows a vehicle with the squad car's emergency lights activated, the intended communication is for the person to pull over and stop; that constitutes a seizure. *State v. Bergerson*, 659 N.W.2d 791, 795 (Minn. App. 2003).

By contrast, case law indicates that a spotlight does not convey a message requiring a person to stop. *Crawford v. Comm'r of Pub. Safety*, 441 N.W.2d 837, 838-39 (Minn. App. 1989) (concluding that no seizure occurred when an officer followed a vehicle into a residential cul-de-sac and used a spotlight to locate the vehicle). The better analogy is to compare the spotlight with a flashlight or a car's headlights. When a police officer illuminates an area, person, or thing with a flashlight or headlights from a position where the officer can legally be, there is no seizure. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980) (holding that when a police officer shined a flashlight into a stopped car from a place where the officer had the right to be, there was no seizure); *State v. Reese*, 388 N.W.2d 421, 422-23 (Minn. App. 1986) (concluding that when police officers angled their cars so that their headlights would illuminate parked cars, it was not a seizure), *review denied* (Minn. Aug. 13, 1986). As we stated in *Crawford*,

> The law makes a distinction between the approach of an already stopped vehicle and the stop of a moving vehicle. It is not a seizure for an officer to simply walk up and talk to a person standing in a public place or to a driver seated in an already stopped car.

441 N.W.2d at 839 (citing *Vohnoutka*, 292 N.W.2d at 757); *see also State v. Landon*, 256 N.W.2d 89, 89 (Minn. 1977) (holding that it is not a violation of the Fourth Amendment when police officers shine a flashlight through the window of a car after legally pulling the car over for a speeding violation). The mere act of directing a light onto a person does not constitute a seizure because, unlike a squad car's emergency lights, there is no message that the person must stop. Here, because appellant was in a public place when she walked through the alley and the police had a right to be there, there was no seizure under the Fourth Amendment.

Furthermore, the use of the spotlight did not result in any change in appellant's behavior. She continued to walk in the direction that she had been. When asked why she continued to walk forward, appellant testified that she "thought [the police officers] were looking for somebody and they were just shining [the light] to see if [she] was who they were looking for." Because an objective and reasonable person would not feel that she was unable to leave under the circumstances, the officer's use of a spotlight did not constitute a seizure of appellant.

Appellant makes the additional argument that she was seized when Officer Reginek ordered her to come over to the squad car and that Officer Reginek lacked reasonable articulable suspicion to stop her because he did so based only on his hunch that she was engaged in criminal activity, supported only by the fact she was walking down the alley late at night. "[A]n officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673,

675 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884-85 (1968)). "Reasonable suspicion must be based on 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quoting *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880). The standard for reasonable suspicion is "less demanding than probable cause or a preponderance of the evidence," but it does require "a minimal level of justification for making the stop." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (citing *Wardlow*, 528 U.S. at 123, 120 S. Ct. at 675-76). The officer must be able to articulate the reasonable suspicions that justify the stop that exist when the seizure is made. *E.D.J.*, 502 N.W.2d at 783. The seizure cannot be the product of mere whim, caprice, or idle curiosity. *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996).

Based on the totality of the circumstances, we conclude that Officer Reginek had reasonable articulable suspicion to conduct an investigatory stop of appellant.

II. Probable Cause

Appellant also contends that Officer Reginek did not have probable cause to arrest her for possession of a burglary tool, and therefore, the subsequent search incident to arrest was illegal, requiring suppression of the methamphetamine as fruit of the illegal arrest. Whether an arrest is supported by probable cause is a question of law, which this court reviews de novo. *State v. Olson*, 634 N.W.2d 224, 228 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001). If police officers have probable cause, they may arrest a felony suspect without a warrant in any public place. *State v. Walker*, 584 N.W.2d 763,

766 (Minn. 1998). If an arrest is valid, the police may conduct a warrantless search of the arrestee as an incident of the arrest. *Id.*

Probable cause is "based on whether the officers in the particular circumstances, conditioned by their own observations and information and guided by the whole of their police experience, reasonably could have believed that a crime had been committed by the person to be arrested." *State v. Hardy*, 577 N.W.2d 212, 216 (Minn. 1998) (quotation omitted). Probable cause requires more than mere suspicion. *Id.* When considering the circumstances, the fact that a defendant might have an innocent explanation does not demonstrate that the officers could not reasonably believe that a crime has been committed. *State v. Hawkins*, 622 N.W.2d 576, 580 (Minn. App. 2001). In evaluating whether probable cause exists, an appellate court looks at "objective facts" and considers the totality of the circumstances. *Olson*, 634 N.W.2d at 228. "The reasonableness of the officer's actions are an objective inquiry; it does not depend on the officer's subjective frame of mind." *Hardy*, 577 N.W.2d at 216.

Appellant cites *Hardy* for the proposition that being in a high-crime area alone does not give the police probable cause to arrest. But this case is distinguishable from *Hardy*. In *Hardy*, police officers noticed Lavell Hardy and Gerald Fleming late at night continuously looking back at the squad car as they walked. *Id.* at 214. Because the officers considered this to be nervous behavior that might be indicative of drug trafficking, they continued to follow Hardy and Fleming. *Id.* They observed that Hardy and Fleming approached a completely dark house. *Id.* Hardy walked up the steps and tried to gain access to it, while Fleming remained at the bottom of the steps. *Id.*

Suspecting a burglary, the officers approached Hardy and Fleming and asked them what they were doing. *Id.* Fleming responded that they were going to visit a friend, but Hardy only nodded his head in agreement. *Id.* at 215. Because the officers suspected that Hardy was hiding drugs in his mouth, they asked Hardy again. *Id.* Hardy then clenched his mouth and tightened his neck muscles as if he were trying to swallow something. *Id.* When the officer asked Hardy to open his mouth, Hardy ran down the steps, and a struggle ensued. *Id.* The officers eventually recovered 13 pellets of crack cocaine that Hardy spit out. *Id.*

Hardy was arrested for possession of a controlled substance. He subsequently challenged the evidence on the ground that the officer's request that Hardy open his mouth constituted an illegal search. This court affirmed the district court's denial of Hardy's motion to suppress the evidence. *See State v. Hardy*, No. C6-96-1927 (Minn. App. May 27, 1997). But the supreme court reversed, holding that the request went beyond mere investigation and constituted a warrantless search for which there was no probable cause. *Hardy*, 577 N.W.2d at 216. The supreme court held that there was insufficient evidence to support probable cause because being in a high-crime area alone was insufficient and the officers did not see any drugs, a drug transfer, or Hardy put anything in his mouth. *Id.*

Here, Officer Reginek saw appellant with a lock-picking tool in a high-crime area. Appellant was unable to adequately explain why she had the lock-picking tool in the alley at midnight. The police also saw the man she was with immediately run away when he saw their squad car. Taking the circumstances as a whole, Officer Reginek had probable

cause to arrest appellant for possession of a burglary tool. Because we conclude that Officer Reginek had probable cause to arrest appellant, the district court did not err by denying appellant's motion to suppress the methamphetamine found in the search incident to her arrest.

Affirmed.