STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0423

State of Minnesota,
Appellant,

vs.

Ryan Matthew Thibedeau,
Respondent.

Filed September 16, 2013
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27CR129029

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

Mark J. Schneider, Jeffrey D. Bores, Chestnut & Cambronne PA, Minneapolis, Minnesota (for appellant)

Mark D. Nyvold, Special Assistant State Public Defender, Fridley, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Schellhas, Judge; and Hooten, Judge.

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

STAUBER, Judge

Appellant challenges a pretrial evidence-suppression order premised on a police officer's seizure of respondent without reasonable suspicion. We affirm.

FACTS

Appellant State of Minnesota charged respondent Ryan Thibedeau with fourth-degree driving while impaired. Thibedeau moved to suppress all evidence seized as a result of his contact with Golden Valley Police Department Patrol Officer Daniel Pacholke. At the suppression hearing, Officer Pacholke was the only witness and testified as follows.

At approximately 1:11 a.m. on New Year's Day, 2011, Officer Pacholke was conducting a routine patrol in the residential area of Golden Valley near Bonnie Lane. Bonnie Lane is a residential street north off of Golden Valley Road that dead ends into a cul-de-sac. While driving westbound on Golden Valley Road, Officer Pacholke observed a legally parked vehicle along the west side of Bonnie Lane with its headlights facing south. A fellow officer had seen the vehicle moments earlier by the cul-de-sac and contacted him by radio, advising of the presence of the vehicle. Officer Pacholke decided to investigate. Officer Pacholke found the vehicle suspicious because it was stopped near a cul-de-sac, the street was dark, and he had rarely seen vehicles near that cul-de-sac except for residents who parked on their driveways or in garages.

Officer Pacholke entered Bonnie Lane and stopped his squad—an SUV—facing the front of the parked vehicle. He stopped the SUV "pretty much in the middle lane, not directly in front of the vehicle but to the east side of the vehicle," angling his SUV west. In doing so, he did not prevent the vehicle from moving forward or backward, but rather allowed his SUV's headlights to illuminate the parked vehicle in order to see its interior and occupants. He also activated his vehicle's red and blue flashing emergency lights to

(1) ensure that anyone driving down Bonnie Lane would be able to see him; (2) ensure that, "if anything were to happen," his fellow officer could find him; and (3) inform the vehicle's occupants that "this is the police." Officer Pacholke exited his SUV and approached the other vehicle's front driver's side window, observing that the engine was running and the radio was on. He does not recall whether he knocked on the window, but the individual in the driver's seat rolled it down.

Officer Pacholke observed that the driver was wearing a seat belt and that keys were in the ignition. Officer Pacholke began speaking with the driver, asked for his driver's license, and identified him as Thibedeau. Thibedeau stated that he and the vehicle's other occupants became lost after leaving a party in Minneapolis. Thibedeau admitted to drinking one beer before driving, but Officer Pacholke smelled a "[s]trong" alcoholic odor coming from the vehicle and observed Thibedeau's eyes to be bloodshot and watery and that he tried to avoid looking at him. Thibedeau was arrested.

The district court granted Thibedeau's suppression motion, concluding that Officer Pacholke seized Thibedeau without reasonable suspicion. This appeal follows.

D E C I S I O N

The state challenges the district court's evidence suppression, and its conclusion that Officer Pacholke seized Thibedeau without reasonable suspicion. "The State may appeal pretrial orders of the district court when the State can [clearly and unequivocally] show that 'the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial.'" *State v. Zais*, 805 N.W.2d 32, 35–36 (Minn. 2011) (quoting Minn. R. Crim. P. 28.04, subd. 2(1)). The suppression of evidence obtained from the

alleged seizure will critically impact the trial's outcome because the record indicates the existence of no other material evidence. *See State v. Obeta*, 796 N.W.2d 282, 286 (Minn. 2011) ("A district court's order suppressing evidence will have a critical impact on the State's ability to prosecute the defendant if the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." (quotations omitted)) The remaining issue in a critical-impact appeal is whether the state "clearly and unequivocally" shows error. *Zais*, 805 N.W.2d at 36.

"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.'" *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (quoting U.S. Const. amend. IV, citing Minn. Const. art. I, § 10). "Evidence obtained as a result of a seizure without reasonable suspicion must be suppressed." *Id.* When, as here, "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). Officer Pacholke testified, and the district court found his testimony credible. We must defer to that credibility determination. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012).

I. Seizure

"[A] 'seizure' occurs only 'when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.'" *Matter of Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S. Ct. 1868, 1879 n.16 (1968)). "Under the Minnesota Constitution, a person has been

seized if in view of all 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." *Harris*, 590 N.W.2d at 98 (quotation omitted); *see also State v. Askerooth*, 681 N.W.2d 353, 362 (Minn. 2004) ("[A] seizure occurs when a reasonable person in the defendant's shoes would not feel free to leave.").

The state argues that a reasonable person in Thibedeau's circumstances would have felt free to leave. We disagree.

Circumstances that may indicate a seizure include: "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Harris*, 590 N.W.2d at 98 (quotations omitted). The record here reveals none of those circumstances. "In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." *Id.* (quotations omitted). But here the circumstances include Officer Pacholke, in the middle of the night, stopping his squad SUV at an angle not quite blocking Thibedeau's vehicle but with its flashing red and blue emergency lights on and headlights shining into the vehicle.

The supreme court stated in *State v. Hanson* that a "reasonable person" sitting in a "car stopped on the shoulder of a highway at night"—who had a police officer "drive[] up behind the car" and turn on the officer's vehicle's "flashing red lights"—"would have assumed that the officer was not doing anything other than checking to see what was going on and to offer help if needed." 504 N.W.2d 219, 219–20 (Minn. 1993); *see also*

Klamar, 823 N.W.2d at 693 (concluding that trooper did not seize Klamar by approaching her vehicle "to check on the welfare of its occupants" when vehicle "was already stopped when the trooper first observed it"). The court also stated that a "reasonable person would know that while flashing lights may be used as a show of authority, they also serve other purposes, including warning oncoming motorists in such a situation to be careful." *Hanson*, 504 N.W.2d at 220.

But the court further noted that "[i]t may be in many fact situations the officer's use of the flashing lights likely would signal to a reasonable person that the officer is attempting to seize the person for investigative purposes." *Id.*; *see, e.g.*, *State v. Bergerson*, 659 N.W.2d 791, 795 (Minn. App. 2003) ("A driver confronted with a trailing squad car with flashing red lights inevitably feels duty bound to submit to this show of authority by pulling over until the officer makes it clear that either the driver is not the target of interest or the driver's encounter with the police has come to a conclusion."); *State v. Sanger*, 420 N.W.2d 241, 243 (Minn. App. 1988) ("Severson's actions—boxing in Sanger's car, then activating his squad's flashing red lights and honking his horn—created a strong show of authority far beyond the realm of private citizens' interactions and resulted in a seizure.").

We note that "'[c]ourts generally have held that it does not by itself constitute a seizure for an officer to simply walk up and talk to a person standing in a public place or to a driver sitting in an already stopped car.'" *Klamar*, 823 N.W.2d at 692 (quoting *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980)). We also note that, although Officer Pacholke stopped his vehicle in front of Thibedeau's vehicle, and that "the use of a squad

car to block a parked vehicle generally constitutes a seizure," *State v. Lopez*, 698 N.W.2d 18, 22 (Minn. App. 2005), Officer Pacholke did not box-in or block Thibedeau's vehicle's movement but rather positioned his SUV squad vehicle at an angle in order to shine his vehicle's headlights into Thibedeau's vehicle. *See State v. Reese*, 388 N.W.2d 421, 422–23 (Minn. App. 1986) (concluding that officers did not seize Reese when they "pulled the police car into the intersection at an angle that allowed the headlights to illuminate Reese's car," which was blocking intersection and had engine and headlights on), *review denied* (Minn. Aug. 13, 1986); *see also Crawford v. Comm'r of Pub. Safety*, 441 N.W.2d 837, 838–39 (Minn. App. 1989) (concluding that officer did not seize Crawford when officer followed his vehicle into a cul-de-sac, "spotlighted the area," and pulled in "behind or to the side of the vehicle" without "her lights on").

But we conclude that a reasonable person in Thibedeau's circumstances would not have felt free to leave. As the district court observed, "[u]nlike *Hanson*, this case involved a quiet residential cul-de-sac with minimal traffic and significantly less need to warn oncoming traffic of the police officer's presence" and that, "[f]or what little traffic may have appeared on this quiet residential cul-de-sac, Officer Pacholke would not have needed to use his emergency lights to warn such traffic of his presence when he was already shining squad car headlights in the window of [Thibedeau]'s vehicle on this very dark street." *See Lopez*, 698 N.W.2d at 22 (distinguishing *Hanson*, noting that, unlike *Hanson*, after officer activated squad car's lights, she "pulled into a parking lot, and not a busy highway, where she did not need to warn oncoming traffic").

The state argues that Officer Pacholke acted pursuant to his duty to investigate vehicles that might be in distress. Indeed, we have previously concluded that a police officer did not seize a defendant from an already-stopped vehicle based in part on the officer's "'duty to make a reasonable investigation of vehicles parked along roadways to offer such assistance as might be needed and to inquire into the physical condition of persons in vehicles.'" *Overvig v. Comm'r of Pub. Safety*, 730 N.W.2d 789, 793 (Minn. App. 2007) (quoting *Kozak v. Comm'r of Pub. Safety*, 359 N.W.2d 625, 627–28 (Minn. App. 1984)), *review denied* (Minn. Aug. 7, 2007); *see also Blank v. Comm'r of Pub. Safety*, 358 N.W.2d 441, 442–43 (Minn. App. 1984) (noting "common practice" of officers "walk[ing] up to cars stopped in the road, in winter, especially when their engines are running and the lights are on" and noting possibility of "mechanical . . . or medical problems . . . , or a variety of reasons justifying investigation").

But those cases are materially distinguishable. In *Overvig*, the officer "did not activate his emergency lights," 730 N.W.2d at 792, and neither *Kozak*, 359 N.W.2d at 625–29, nor *Blank*, 358 N.W.2d at 442–43, indicates the activation of emergency lights. Moreover, Thibedeau's vehicle was not stopped alongside a highway, as in *Kozak*, 389 N.W.2d at 627, or *Blank*, 358 N.W.2d at 442, or in an empty ballroom parking lot, as in *Overvig*, 730 N.W.2d at 791. Thibedeau was parked on a residential cul-de-sac with homes nearby. As the district court observed, "[u]nlike a car on the shoulder of a freeway, where car trouble or driver distress are high-probability events, a car parked with its lights on in a residential cul-de-sac could very easily be an individual dropping someone off at the end of a night."

We agree with the district court and conclude that Officer Pacholke seized Thibedeau by pulling his SUV onto the residential street that dead ended into a cul-de-sac, angled it nose to nose with Thibedeau's vehicle, though not blocking it; shining the SUV's headlights into the vehicle; activating the SUV's flashing red and blue emergency lights; and approaching Thibedeau's vehicle's driver-side window. Consequently, unless reasonable suspicion supported the seizure, the district court properly suppressed the evidence that resulted. *See Diede*, 795 N.W.2d at 842.

II. Reasonable Suspicion

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). "[B]y virtue of the special training they receive, police officers articulating a reasonable suspicion may make inferences and deductions that might well elude an untrained person." *State v. Smith*, 814 N.W.2d 346, 352 (Minn. 2012). (quotation omitted). But "[r]easonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate at the omnibus hearing that he or she had a *particularized* and objective basis for suspecting the seized person *of criminal activity*." *Diede*, 795 N.W.2d at 842–43 (emphasis added) (quotations omitted).

At the hearing, Officer Pacholke did not articulate any suspected criminal activity by Thibedeau or the occupants of his vehicle. He stated only that the vehicle was "suspicious" because of the darkness of the street, because of the vehicle's proximity to a cul-de-sac, and because vehicles on that road are rarely not in garages or on driveways.

But "[r]easonable suspicion is more than an unarticulated hunch." *State v. Anderson*, 733 N.W.2d 128, 138 (Minn. 2007) (quotation omitted).

We conclude that the district court did not err by suppressing the evidence that resulted from Officer Pacholke's seizure of Thibedeau because Officer Pacholke seized Thibedeau without reasonable suspicion of criminal activity.

Affirmed.