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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1248**

Brent Anthony Ficocello, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed May 20, 2008  
Affirmed  
Shumaker, Judge**

Anoka County District Court  
File No. 02-C2-07-000525

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Considered and decided by Willis, Presiding Judge; Shumaker, Judge; and  
Poritsky, Judge.\*

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals  
by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**SHUMAKER**, Judge

Appellant challenges the district court's order sustaining the revocation of his driver's license under the implied-consent law, arguing that the officer's seizure of him was unconstitutional. Because we conclude that the emergency exception applies and that the officer's conduct in seizing appellant was reasonable under that exception, we affirm.

### FACTS

On December 21, 2006, at about 11:40 p.m., Officer Timothy Hawley was on patrol in Blaine, Minnesota. Several inches of snow had fallen that day, and light snow was still falling that evening. As he was driving, the officer saw fresh tire tracks in the snow going off the roadway and heading toward a holding pond.

The officer parked his squad car on the side of the road and walked toward the tire tracks to investigate. After walking down an embankment, he saw a pickup truck submerged in the holding pond with water up to its windows. The officer testified that when he saw the truck in the water, he was concerned about the occupants. Using his flashlight, he determined that the truck appeared to be empty. He ran back to his squad car to check the truck's license plate in order to identify the registered owner. He learned that the truck was registered to appellant Brent Ficocello, and he considered sending a second squad to Ficocello's address to check on his condition.

The officer then walked back toward the submerged truck and noticed a set of footprints in the snow from the pond heading southeast toward the sidewalk. Other than

these and the officer's footprints, there were no other footprints in the freshly fallen snow.

The officer saw that the footprints led up to a sidewalk, and he then saw a man walking away from the area. The man was approximately 75 feet away from the officer, and no one else was in the vicinity. The officer twice yelled at the man, ordering him to stop. Once the man stopped, the officer instructed the man to come back toward him. The officer testified that he ordered the man to stop because he was concerned about his medical condition.

As the man walked toward him, the officer noticed he was stumbling and having a hard time walking. In response to the officer's questions, the man identified himself as "Brent," acknowledged that he owned the submerged truck, and admitted that he had been at a local restaurant where he had consumed four to five alcoholic beverages. The officer never asked Ficocello if he required medical attention and never asked if he was injured. But the officer did ask Ficocello if anyone else was in the truck. During their conversation, the officer noticed that Ficocello's eyes were glassy and that a strong odor of alcohol came from Ficocello. Based on their conversation and his observations, the officer administered field sobriety tests and a preliminary breath test. He then arrested Ficocello for driving while impaired. Ficocello submitted to a breath test, which revealed an alcohol concentration over the legal limit.

At his implied-consent hearing, Ficocello contended that the officer lacked a lawful basis for seizing him. The district court disagreed, concluding that the stop and

detention were lawful and that probable cause existed to arrest Ficocello. Accordingly, the court sustained the revocation of Ficocello's driving privileges. This appeal followed.

## DECISION

The Fourth Amendment to the United States Constitution and article I, section 10, of the Minnesota Constitution prohibit unreasonable searches and seizures. *State v. Burbach*, 706 N.W.2d 484, 487-88 (Minn. 2005). “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.” *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995) (quotation omitted). Warrantless searches and seizures “are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions.” *In re Welfare of G.M.*, 560 N.W.2d 687, 692 (Minn. 1997) (quotation omitted). But “[i]t is not unreasonable for an officer to make a brief seizure of a person for investigatory purposes if the officer has an objective basis for suspecting that the person is involved in criminal activity or is in need of medical assistance.” *Overvig v. Comm’r of Pub. Safety*, 730 N.W.2d 789, 793 (Minn. App. 2007) (citations and quotation omitted), *review denied* (Minn. Aug. 7, 2007).

To determine whether a stop is justified, the court must consider the totality of the circumstances. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). Whether a seizure is constitutional is a question of law and is reviewed de novo. *State v. Lopez*, 698 N.W.2d 18, 22 (Minn. App. 2005). The district court's findings of fact are reviewed for clear error. *Britton*, 604 N.W.2d at 87.

The parties agree, and the district court found, that Ficocello was seized when the officer ordered him to stop and to walk back toward him. The parties also agree that the officer did not seize Ficocello on the basis of any articulable reasonable suspicion of criminal activity. *See State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001) (allowing an officer to conduct a brief investigatory seizure if the officer has a reasonable suspicion of criminal activity based on specific and articulable facts).

The commissioner argues, however, that the seizure was justified under the emergency exception to the warrant requirement. *See Lopez*, 698 N.W.2d at 23 (“In addition to suspicion of criminal activity, an exception to the protections against warrantless seizures and searches exists for emergency situations.”). We agree.

Minnesota courts have “adopted a two-part test for use of the emergency exception.” *Id.* (citing *State v. Auman*, 386 N.W.2d 818, 821 (Minn. App. 1986), *review denied* (Minn. July 16, 1986)). Under this test, the officer must be “motivated by the need to render aid or assistance,” and the circumstances must be such that “a reasonable person [would] believe that an emergency existed.” *Id.* (citing *Auman*, 386 N.W.2d at 821).

The officer testified that he seized Ficocello because he was concerned about his medical condition. Ficocello argues, however, that the officer’s stated reason is inconsistent with the officer’s subsequent actions because the officer never actually inquired about his medical condition after seizing him. But Ficocello’s argument simply raises a credibility issue, and the district court found the officer’s testimony to be credible and reasonable. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (explaining

that reviewing courts “accord great deference to the trial court’s determinations” on witness’s credibility and the weight given to their testimony). Although an officer’s conduct after a seizure can be corroborative of his purpose for the seizure, no authority requires such corroboration. The officer’s conduct prior to the seizure supports the conclusion that he seized Ficocello to check on his medical condition. The evidence in the record indicates that the officer saw the submerged truck, tried to determine if anyone was inside, returned to his squad to identify the registered owner, considered sending another officer to the home of the registered owner to inquire as to the person’s condition, went back to the truck to investigate further, at which point he noticed Ficocello’s footprints, and then saw Ficocello and ordered him to stop. The record supports the conclusion that the officer was motivated by a need to determine whether it was necessary to aid or assist Ficocello when he ordered him to stop.

After seeing the fresh tire tracks leading to the pond and seeing the truck submerged in the water, it was reasonable for the officer to conclude that a serious accident had occurred and that the truck’s driver or occupants might be in need of medical assistance. Moreover, officers have an affirmative duty to investigate accidents, and the officer’s conduct here was a reasonable exercise of that duty. *See Lopez*, 698 N.W.2d at 23 (explaining that when an officer is lawfully investigating an individual’s welfare “the officer must be permitted to make contact with the individual and ensure that the individual does not require additional medical assistance”). Ficocello was the only person in the vicinity, and the footprints leading away from the accident led directly to him. As a result, it was reasonable for the officer to conclude that Ficocello was involved

in the accident. Under these circumstances, the officer's belief that more investigation was necessary and the officer's seizure of Ficocello to conduct that investigation were reasonable.

Because the evidence shows that an emergency existed and that, in seizing Ficocello, the officer was reasonably responding to that emergency by minimally intruding on Ficocello's freedom of movement so that the extent of the emergency could be assessed, the officer's conduct was lawful under the emergency exception to the warrant requirement. Accordingly, we affirm the district court's order sustaining the revocation of Ficocello's driver's license.

**Affirmed.**