STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1696

State of Minnesota,
Appellant,

vs.

Ronald Joel Scheffler,
Respondent.

Filed March 4, 2008
Affirmed
Worke, Judge

Clay County District Court
File No. 14-K0-07-928

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Brian Melton, Clay County Attorney, Stephanie Borgen, Assistant County Attorney, Clay County Courthouse, 807 North 11th Street, Moorhead, MN 56560 (for appellant)

Cash H. Aaland, Jesse N. Lange, Aaland Law Office, Ltd., 415 11th Street South, P. O. Box 1817, Fargo, ND 58107 (for respondent)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Collins, Judge.*

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

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

WORKE, Judge

In this pretrial appeal, the state argues that the district court erred in suppressing the evidence and dismissing the DWI charges against respondent after finding that respondent's Fourth Amendment right against an unreasonable seizure was violated when the officer did not suspect any criminal activity prior to parking his vehicle in front of respondent's vehicle, which prevented respondent from leaving. We affirm.

D E C I S I O N

When the state appeals a pretrial suppression order, it "must 'clearly and unequivocally' show both that the [district] court's order will have a 'critical impact' on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (citing *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995)). "[T]he critical impact of the suppression must be first determined before deciding whether the suppression order was made in error." *Id.* Critical impact exists "not only in those cases where the lack of the suppressed evidence completely destroys the state's case, but also in those cases where the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *State v. Kim*, 398 N.W.2d 544, 551 (Minn. 1987). Here, the district court suppressed all of the evidence and dismissed the DWI charges against respondent Ronald Joel Scheffler. The district court's order significantly reduces the likelihood of a successful prosecution; thus, the state has met its critical-impact burden.

We must now determine whether the district court's order constituted error. *See Scott*, 584 N.W.2d at 416. When reviewing a pretrial order suppressing evidence when the facts are not in dispute and the district court's decision is a question of law, this court may "independently review the facts and determine, as a matter of law, whether the evidence need be suppressed." *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). When the facts are in dispute, this court reviews the district court's findings of fact for clear error and accords great deference to the district court's credibility determinations. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000); *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

The state argues that the district court erred in ruling that respondent's Fourth Amendment right against an unreasonable seizure was violated when the police officer failed to articulate a specific basis for suspecting criminal activity prior to seizing respondent by preventing him from exiting a pasture. The United States and Minnesota Constitutions protect against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "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." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (quotations and citations omitted). "[W]hen a person is seized, courts must suppress evidence gathered as a result of that seizure only when the seizure was unreasonable." *Id.* at 99.

A brief investigatory seizure of a person "is not unreasonable if an officer has a particular and objective basis for suspecting the particular person [seized] of criminal

activity." *Id.* (quotation omitted). In some circumstances even "innocent activity might justify the suspicion of criminal activity." *State v. Johnson*, 444 N.W.2d 824, 826 (Minn. 1989). "The officer may justify his decision to seize a person based on the totality of the circumstances and may draw inferences and deductions that might elude an untrained person. However, a mere hunch, absent other objectively reasonable articulable facts, will not justify a seizure." *Harris*, 590 N.W.2d at 99 (quotation and citation omitted). While a seizure does not necessarily occur when an officer approaches and talks to a person standing in a public place, a seizure may occur if an officer engages in some action or show of authority which one would not expect between two private citizens, such as boxing in a vehicle. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980); *Klotz v. Comm'r of Pub. Safety*, 437 N.W.2d 663, 665 (Minn. App. 1989), *review denied* (Minn. May 24, 1989).

In *Klotz*, an officer received radio reports of a drunk driver. 437 N.W.2d at 664. The officer found an unoccupied vehicle matching the description of the reported vehicle parked at a rest stop. *Id.* The officer observed a man walk toward the vehicle but turn around after seeing the officer. *Id.* The officer left and waited for the vehicle to drive by, but when that did not happen, the officer returned to the rest area. *Id.* The officer observed the same man get into the vehicle and start it, but he did not drive away. *Id.* The officer pulled up behind the vehicle and parked, partially blocking it, as the man exited the vehicle and walked away. *Id.* The officer called out to the man, told him to stop, told him he received a report of an intoxicated driver, and asked him to identify himself. *Id.* The officer then observed indicia of intoxication and placed the man under

arrest for DWI. *Id.* This court held that the officer's acts of partially blocking the man's vehicle, calling out to the man and asking him to stop and identify himself was a show of authority that compelled the conclusion that a seizure occurred. *Id.* at 665.

Here, an officer observed a vehicle being driven in a fenced-in pasture at approximately 1:30 a.m. At the omnibus hearing, the officer testified that he did not witness any traffic violations or suspect criminal activity. According to the officer, he merely found it suspicious that a vehicle was being driven in a pasture at approximately 1:30 a.m. because farmers typically do not work at that time. The officer drove into the pasture with his headlights and "takedown lights," which are white lights located on top of the car, on. The officer testified that respondent turned his vehicle's lights off when the squad car approached. The officer further testified that he parked his squad car between 15 to 50 yards from the entrance and that respondent would have been able to drive around the squad car if he had tried to leave. The officer testified that respondent got out of his vehicle and approached him. The officer asked respondent what he was doing in the pasture. Respondent replied that the landowner was a friend. The officer then asked for respondent's identification, and observed indicia of intoxication. The officer administered field sobriety tests, which respondent failed to perform adequately; respondent also failed a preliminary breath test. Respondent was placed under arrest for DWI.

Respondent testified that he parked approximately 20 to 30 yards from the only entrance to the pasture; his passenger testified that the vehicle was parked approximately three car lengths from the entrance. According to respondent and his passenger,

respondent turned his lights off before the officer approached. Respondent and his passenger also testified that the officer parked his squad car halfway through the entrance and that his squad car blocked the entrance. Both testified that they would not have been able to drive around the squad car and leave. Similar to *Klotz*, the officer here partially blocked respondent's vehicle. The district court found that the officer parked his vehicle between respondent's vehicle and the only exit to the fenced-in pasture and that respondent reasonably believed that he was not free to leave the scene. This finding is supported by the record. The district court did not err in concluding that respondent was seized when the officer parked his squad car between respondent's vehicle and the only exit.

The state argues that even if respondent was seized, the officer was justified in temporarily seizing respondent because he observed an apparent trespasser driving a vehicle in a fenced-in pasture at an odd hour. In *Cobb v. Comm'r of Pub. Safety*, an officer received a dispatch that a private citizen reported a suspicious vehicle parked for ten minutes in a neighborhood and described the vehicle. 410 N.W.2d 902, 902 (Minn. App. 1987). The officer, who had knowledge of burglaries committed in the neighborhood, found the vehicle, which was parked with its engine running. *Id.* at 902-03. The officer approached the driver and knocked on the window. *Id.* at 903. The officer asked for the driver's identification and noticed an odor of alcohol on the driver's breath. *Id.* This court held that the officer had an articulable basis for requesting the driver's identification because a private citizen reported a suspicious vehicle parked in a neighborhood for ten minutes and described the vehicle, and the officer had knowledge

of burglaries in the neighborhood. *Id.* And in *Klotz*, although this court determined that the driver was seized when the officer parked behind his vehicle, we affirmed the revocation of the driver's license because the officer had a specific and articulable basis for suspecting criminal activity; the officer received two radio reports, found a vehicle matching the description of the reported vehicle, and observed the driver engage in furtive behavior. 437 N.W.2d at 665.

Here, unlike *Cobb*, the officer did not receive a tip from a private citizen, did not have knowledge that crimes had been committed in the pasture, and did not believe that a crime was being committed. 410 N.W.2d at 903. And unlike *Klotz*, the officer did not receive reports of a drunk driver and then locate the reported vehicle and observe the driver engage in furtive behavior. 437 N.W.2d at 665. The officer testified that it was just odd to see a vehicle in a pasture at approximately 1:30 a.m. Although there is some question whether respondent turned his lights off in response to the officer approaching, the district court found that when the officer "located the entrance to the pasture, the vehicle had parked and had its lights off." This finding is not clear error based on the testimony. The district court did not err in suppressing the evidence and dismissing the charges.

Affirmed.