



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-15-00307-CR

THE STATE OF TEXAS

STATE

V.

CHAD SANDIFER

APPELLEE

FROM COUNTY CRIMINAL COURT NO. 5 OF DENTON COUNTY
TRIAL COURT NO. CR-2015-02720-E

MEMORANDUM OPINION¹

Appellant Chad Sandifer was charged with driving while intoxicated with an alcohol concentration level of 0.15 or more. Tex. Penal Code Ann. § 49.04(a), (d) (West Supp. 2016). He filed a pretrial motion to suppress evidence, which the trial court granted. In one issue, the State appeals from that order. We reverse and remand.

¹See Tex. R. App. P. 47.4.

I. BACKGROUND

At the suppression hearing, the State offered into evidence the testimony of Frisco Police Department Officer Stephen Byrom and a dashcam video from Officer Byrom's police cruiser showing his interaction with Sandifer. Officer Byrom testified that on the night of October 23, 2014, he was on routine patrol of Panther Creek Parkway, a four-lane, median-divided road running in an east and west direction in Frisco. At approximately 9:20 p.m., he was heading eastbound in an area that did not have many houses or businesses around it.² It was dark outside, and as he proceeded eastbound, he noticed a dark-colored BMW passenger car stopped in a "little cutout" on the side of the westbound lanes of Panther Creek Parkway, which had not been there during his previous passes by that area. Officer Byrom stated that the cutout was "almost like entering a driveway for a residence, but . . . not quite as long as a driveway" and that it "just end[ed] and turn[ed] into gravel and grass" and ultimately a field. Further describing the cutout, Officer Byrom stated that it "look[ed] like it was probably designed for a future road, maybe, or something like that."

Because the BMW had not been stopped in the cutout when he passed by a short time earlier, Officer Byrom wanted to see if anyone in the BMW needed

²Officer Byrom testified that the area surrounding Panther Creek Parkway was "not completely developed yet" and that the nearest house was approximately "a half a mile to a mile" and the nearest gas station was "probably going to be a couple miles away" from the area where his interaction with Sandifer occurred.

assistance, so he made a U-turn and pulled toward the cutout. As he made the U-turn, Officer Byrom radioed the dispatcher that he was stopping for a “motorist assist.” Although he had not seen any emergency flashers illuminated on the BMW when he first noticed it in the cutout, upon making the U-turn, Officer Byrom saw that the BMW’s emergency flashers were on. He parked his police cruiser partially in one of the westbound lanes about five to ten feet behind the cutout so that he did not block the BMW in.

Officer Byrom further testified that as he pulled toward the cutout, he intended to activate his rear-facing overhead emergency lights to alert other motorists of the situation so they would not hit his police cruiser or the BMW. However, in addition to illuminating his rear-facing overhead emergency lights, Officer Byrom briefly illuminated his front-facing overhead emergency lights as well. Officer Byrom turned off his front-facing emergency lights and left his rear-facing emergency lights activated. He also turned on his vehicle’s spotlight and pointed it at the BMW’s trunk and license plate; he did not shine the spotlight directly on the BMW’s driver. When asked why he had turned on the spotlight, Officer Byrom testified that although there were some lights in the median, it was still quite dark around the area where the BMW was stopped. He explained that any time he engaged in a traffic stop or a motorist assist and it was dark out, he “always like[d] to light up the area as much as possible” for his personal safety and the safety of others, as well as to have “a lit-up area to work in.”

Officer Byrom got out of his vehicle, and as he approached the BMW's front driver-side door, he could hear Sandifer talking on the telephone through the vehicle's hands-free system. When he reached the front driver-side door, Officer Byrom saw Sandifer sitting in the driver's seat, and the front driver-side window was rolled up. Officer Byrom testified that he knocked on the front driver-side window and introduced himself. Sandifer rolled down the window, and Officer Byrom immediately smelled the odor of alcohol. At that point, Officer Byrom realized that Sandifer was speaking to a roadside assistance operator on the telephone, and he also observed that Sandifer was slurring his speech while talking to the roadside assistance operator. Officer Byrom testified that he used a friendly, conversational tone in his initial contact with Sandifer.

The video of Officer Byrom's interaction with Sandifer shows that as Officer Byrom completed his U-turn on Panther Creek Parkway, his police cruiser's front-facing emergency lights came on until he parked near the cutout and turned them off. In total, the front-facing emergency lights were illuminated for approximately seven seconds before Officer Byrom turned them off. Additionally, consistent with Officer Byrom's testimony, the video shows that he directed his police cruiser's spotlight at the BMW's rear license plate. When Officer Byrom approached the BMW's front driver-side door, he tapped on the driver's window once and asked, "How's it going?" Sandifer rolled down the window but did not immediately respond to Officer Byrom's question; instead, he continued his telephone conversation. Officer Byrom quietly stood next to the BMW's front

driver-side door while Sandifer continued his telephone conversation. After approximately thirty-eight seconds, there was a pause in Sandifer's telephone conversation, and at that point Officer Byrom identified himself and told Sandifer that he had not seen his car stopped there earlier and "just wanted to make sure everything was alright." He also told Sandifer that he could stay in his car. Sandifer's telephone conversation with the roadside assistance operator resumed, and Officer Byrom continued to stand quietly next to the front driver-side door until Sandifer's telephone conversation ended approximately eighteen seconds later.³ Officer Byrom then asked Sandifer what had happened, and Sandifer responded that he had a flat tire. Eventually, Officer Byrom asked Sandifer to submit to field sobriety testing, and Sandifer refused to do so. Officer Byrom arrested Sandifer for driving while intoxicated, and Sandifer was subsequently charged with driving while intoxicated with an alcohol concentration level of 0.15 or more.

At the suppression hearing, Sandifer stipulated that Officer Byrom had either reasonable suspicion or probable cause to detain him once Officer Byrom smelled the odor of alcohol coming from his vehicle and heard him slurring his speech while talking on the telephone. He argued, however, that Officer Byrom's initial contact with him was unlawful because it constituted a stop and Officer

³In total, more than a minute expired from the time that Officer Byrom tapped on Sandifer's window and asked, "How's it going?" to the time Sandifer's telephone conversation ended.

Byrom did not have reasonable suspicion or probable cause to initiate a stop. The State contended that Officer Byrom's interaction with Sandifer began as a voluntary encounter, and assuming it did not, that Officer Byrom was nevertheless justified in approaching Sandifer by virtue of his community-caretaking function.

The trial court granted Sandifer's motion to suppress and stated on the record its reasons for doing so. Specifically, the trial court recited the test for analyzing whether a police interaction falls within the community-caretaking exception to the Fourth Amendment as set forth in *Gonzales v. State*, 369 S.W.3d 851, 854–55 (Tex. Crim. App. 2012), applied that test to the evidence summarized above, and concluded that Officer Byrom did not have a reasonable belief that Sandifer was in need of help, and thus Officer Byrom's initial contact with Sandifer did not fall within the Fourth Amendment's community-caretaking exception. In stating its reasoning for granting Sandifer's motion to suppress, however, the trial court did not address the State's argument that Officer Byrom's initial interaction with Sandifer was a voluntary encounter. Following the hearing, the State asked the trial court to enter written findings of fact and conclusions of law, and the trial court did so. The State timely filed this interlocutory appeal. See Tex. Code Crim. Proc. Ann. art. 44.01(a)(5) (West Supp. 2016).

II. ENCOUNTER VS. INVESTIGATORY DETENTION

In one issue, the State contends that the trial court erred in granting Sandifer’s motion to suppress, arguing that the initial contact between Officer Byrom and Sandifer was a voluntary encounter, not a “seizure.”⁴ Because it was not a seizure, the State argues, Officer Byrom’s initial contact with Sandifer was lawful because he was not required to have reasonable suspicion, probable cause, or any other justification to make contact with Sandifer. In response, Sandifer maintains that Officer Byrom’s initial contact with him constituted an investigatory detention, which is unlawful without reasonable suspicion, and that Officer Byrom did not have reasonable suspicion before making contact with him. We conclude that Officer Byrom’s initial contact with Sandifer was an encounter.

A. APPLICABLE LAW

The Fourth Amendment protects a person against unreasonable searches and seizures, but not every interaction between a police officer and a citizen will trigger Fourth Amendment scrutiny. See U.S. Const. amend. IV; *Florida v. Bostick*, 501 U.S. 429, 434, 111 S. Ct. 2382, 2386 (1991). The Texas Court of Criminal Appeals has recognized three distinct categories of interactions between police officers and citizens: encounters, investigative detentions, and arrests. *State v. Perez*, 85 S.W.3d 817, 819 (Tex. Crim. App. 2002).

⁴In the alternative, the State argues that even assuming that the initial contact was a seizure, it was nevertheless justified—even without reasonable suspicion or probable cause—as part of Officer Byrom’s community-caretaking function.

Encounters are consensual interactions that the citizen is free to terminate at any time and thus do not constitute a seizure within the meaning of the Fourth Amendment. *Johnson v. State*, 912 S.W.2d 227, 235 (Tex. Crim. App. 1995); *State v. Priddy*, 321 S.W.3d 82, 86 (Tex. App.—Fort Worth 2010, pet. ref'd). Because an encounter is not a seizure, a police officer need not have reasonable suspicion or probable cause before engaging in an encounter with a citizen. *Johnson*, 912 S.W.2d at 235; *Priddy*, 321 S.W.3d at 86–87. So long as a reasonable person would feel free to disregard the officer and go about his business, a police officer may approach and ask an individual questions without implicating the Fourth Amendment. *Corbin v. State*, 85 S.W.3d 272, 276 (Tex. Crim. App. 2002). Thus, for example, a police officer needs no justification to knock on someone's door and ask to talk with him; to approach a person on the street or in his car and ask for information or his cooperation; to ask a person to produce his identification; or even to request that a person consent to a search. *Bostick*, 501 U.S. at 434–35, 111 S. Ct. at 2386; *State v. Garcia-Cantu*, 253 S.W.3d 236, 243 (Tex. Crim. App. 2008). As long as those interactions remain consensual, no seizure has occurred, and the Fourth Amendment is not implicated. See *Johnson*, 912 S.W.2d at 235; *Priddy*, 321 S.W.3d at 86.

In contrast to encounters, both investigative detentions and arrests are seizures under the Fourth Amendment. See *Priddy*, 321 S.W.3d at 86. The Fourth Amendment requires a seizure to be objectively reasonable in light of the particular circumstances of the case. *Corbin*, 85 S.W.3d at 276. Generally, an

investigative detention is reasonable if it is based upon reasonable suspicion—that is, if the detaining officer has “specific, articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably conclude that a particular person actually is, has been, or soon will be engaged in criminal activity.” *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005); *Corbin*, 85 S.W.3d at 276. And a warrantless arrest is generally reasonable if it is based upon probable cause—that is, if the facts and circumstances within the arresting officer’s knowledge and of which he has reasonably trustworthy information are “sufficient in themselves to warrant a man of reasonable caution in the belief that a particular person has committed or is committing an offense.” *Corbin*, 85 S.W.3d at 276; *Amores v. State*, 816 S.W.2d 407, 411, 413 (Tex. Crim. App. 1991). In addition, even without reasonable suspicion or probable cause, a police officer may reasonably seize an individual through the exercise of his community-caretaking function. *Corbin*, 85 S.W.3d at 276; *Wright v. State*, 7 S.W.3d 148, 151–52 (Tex. Crim. App. 1999).

B. THE TRIAL COURT’S RULING ON THE QUESTION OF ENCOUNTER VERSUS INVESTIGATORY DETENTION

As noted above, although the State raised at the suppression hearing the argument that Officer Byrom’s initial contact with Sandifer was an encounter and not a detention, the trial court did not expressly rule on, or issue any findings relevant to, that question either at the hearing or in its written findings of fact and conclusions of law. The express basis for the trial court’s ultimate ruling granting

Sandifer's motion to suppress was that it concluded Officer Byrom's initial contact with Sandifer did not fall within the community-caretaking exception. A court's analysis of whether an officer's contact with a citizen is justified under the community-caretaking exception presupposes that a Fourth Amendment seizure has occurred. See *Corbin*, 85 S.W.3d at 276 (analyzing community-caretaking exception after first concluding that defendant had been seized); *Randall v. State*, 440 S.W.3d 74, 79 (Tex. App.—Waco 2012, pet. ref'd) (stating that community-caretaking exception presupposes a detention). Therefore, in granting Sandifer's motion to suppress on the basis that Officer Byrom's initial contact with him was not justified under the community-caretaking function exception, the trial court implicitly ruled that the initial contact constituted a detention rather than an encounter. See *Corbin*, 85 S.W.3d at 276; *Randall*, 440 S.W.3d at 79.

C. STANDARD OF REVIEW

Whether a particular police-citizen interaction constitutes an encounter or investigatory detention is a question of law that we review de novo. *Johnson v. State*, 414 S.W.3d 184, 192–93 (Tex. Crim. App. 2013); *Garcia-Cantu*, 253 S.W.3d at 241; *State v. Woodard*, 314 S.W.3d 86, 93 (Tex. App.—Fort Worth), *aff'd*, 341 S.W.3d 404 (Tex. Crim. App. 2011). We view the evidence in the light most favorable to the ruling in question. See *Johnson*, 414 S.W.3d at 192; *Garcia-Cantu*, 253 S.W.3d at 241. Because the record is silent as to the reasons for the trial court's implicit ruling that Officer Byrom's initial contact with

Sandifer constituted a seizure rather than an encounter, and because the trial court made no explicit findings of fact relevant to the question of encounter versus detention, we will infer the necessary fact findings that would support the ruling if the evidence, viewed in the light most favorable to the ruling, supports those findings. See *Johnson*, 414 S.W.3d at 192; *Garcia-Cantu*, 253 S.W.3d at 241.

D. APPLICATION

An investigative detention—and thus, seizure—occurs when a person yields to a police officer’s show of authority under a reasonable belief that he is not free to leave. See *Johnson*, 414 S.W.3d at 193. In determining whether a police-citizen interaction is an encounter or investigative detention, we focus on whether the officer’s conduct conveyed a message that compliance with his requests was required. *Id.* We answer that inquiry by considering whether, under the totality of the circumstances, a reasonable person would have felt free to decline the officer’s requests or otherwise terminate the encounter. *Id.* In performing a totality-of-the-circumstances review, we consider the circumstances surrounding the police-citizen interaction, including time and place, but the officer’s conduct is the most important factor when deciding whether an interaction was an encounter or a detention. *Woodard*, 341 S.W.3d at 411.

Examples of circumstances indicating that a seizure has occurred 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." *Crain v. State*, 315 S.W.3d 43, 49–50 (Tex. Crim. App. 2010) (quoting *U.S. v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877 (1980)). However, there are no per se or bright-line rules in determining whether a police-citizen interaction constitutes an encounter or an investigative detention. *Woodard*, 341 S.W.3d at 411; *Garcia-Cantu*, 253 S.W.3d at 243. In general, when an officer through force or a showing of authority restrains a citizen's liberty, the interaction constitutes a seizure. See *Woodard*, 341 S.W.3d at 411.

We begin our analysis with the observation that Sandifer's vehicle was parked in a cutout of a public road, and Officer Byrom was as free as any other citizen to approach it, tap on the front driver-side window, and ask Sandifer for information. See *Bostick*, 501 U.S. at 434–35, 111 S. Ct. at 2386; *Garcia-Cantu*, 253 S.W.3d at 243; *Merideth v. State*, 603 S.W.2d 872, 873 (Tex. Crim. App. 1980); *Ashton v. State*, 931 S.W.2d 5, 6–7 (Tex. App.—Houston [1st Dist.] 1996, pet. ref'd). Sandifer contends, however, that a detention occurred because Officer Byrom, by activating his police cruiser's overhead emergency lights and pointing its spotlight at the rear license plate area of his vehicle, made a show of authority that would lead a reasonable person to feel that he was not free to leave, to decline Officer Byrom's request for information, or otherwise terminate the encounter; and that he actually yielded to that show of authority by rolling down his window.

1. Show of Authority

Citing *United States v. Griffin*, 652 F.3d 793 (7th Cir. 2011), Sandifer contends that “[a] police officer’s activation of flashing overhead lights ‘unquestionably qualifie[s] as a show of authority.’” *Griffin*, 652 F.3d at 798. We reiterate, however, that there are no per se or bright-line rules in determining whether a police-citizen interaction is an encounter or an investigatory detention. *Woodard*, 341 S.W.3d at 411; *Garcia-Cantu*, 253 S.W.3d at 243. The fact that a police officer illuminates his police cruiser’s overhead emergency flashing lights does not automatically turn an encounter into an investigatory detention. See *Randall*, 440 S.W.3d at 78 (holding police-citizen interaction was an encounter notwithstanding the fact that officer illuminated his police cruiser’s overhead emergency flashers); *Franks v. State*, 241 S.W.3d 135, 142 (Tex. App.—Austin 2007, pet. ref’d) (same); *Martin v. State*, 104 S.W.3d 298, 301 (Tex. App.—El Paso 2003, no pet.) (same); see also *Hudson v. State*, 247 S.W.3d 780, 785 (Tex. App.—Amarillo 2008, no pet.) (acknowledging that “[a]ctivation of overhead lights on a police vehicle does not necessarily make an encounter non-consensual”). Nor does an officer’s use of his police cruiser’s spotlight necessarily transform an encounter into an investigatory detention. See *Crain*, 315 S.W.3d at 51 (stating that a police officer’s use of his police cruiser’s spotlight alone is not sufficient to transform an encounter to a detention); *Hernandez v. State*, 376 S.W.3d 863, 872 (Tex. App.—Fort Worth 2012, no pet.) (same). We will not view in isolation the facts that Officer Byrom briefly

illuminated his police cruiser's front-facing emergency flashers and that he directed its spotlight at Sandifer's vehicle. Rather, we consider these facts along with all of the other relevant facts to ascertain whether, under the totality of the circumstances, Officer Byrom made such a show of authority that would lead a reasonable person to believe that he was not free to leave, to decline Officer Byrom's requests, or to otherwise terminate the encounter. See *Johnson*, 414 S.W.3d at 193.

Sandifer's vehicle was parked in a cutout area of a public road at approximately 9:20 p.m. It was dark outside, the vehicle's emergency flashers were illuminated, and the vehicle was stopped there because, according to Sandifer, it was disabled. When Officer Byrom noticed Sandifer's vehicle, he pulled his police cruiser near the cutout and parked, taking care not to block in Sandifer's vehicle. Although Officer Byrom initially turned on his front- and rear-facing overhead emergency flashers, he turned off the front-facing overhead emergency flashers after approximately seven seconds. He did not turn on his siren. He pointed his spotlight at the rear license plate area of Sandifer's vehicle and never shined it in the passenger compartment. Officer Byrom got out of his vehicle, calmly approached Sandifer's front driver-side door, tapped on the window once, and in a conversational tone said, "How's it going?" through the window. Although Sandifer rolled down his window, he did not otherwise respond to Officer Byrom but instead continued his telephone conversation. Officer Byrom patiently and quietly waited by the front driver-side door while

Sandifer continued his telephone conversation. After approximately thirty-eight seconds, when there was a pause in Sandifer's telephone conversation, Officer Byrom, still in a conversational tone, identified himself and told Sandifer that he had not seen his car stopped there earlier and "just wanted to make sure everything was alright." He also told Sandifer that he could remain in his vehicle. Sandifer's telephone conversation resumed, and Officer Byrom stood by quietly for approximately eighteen more seconds until Sandifer's telephone call ended. At no point did Officer Byrom insist that Sandifer end his telephone call or otherwise try to compel a response from Sandifer. During the period relevant to Sandifer's motion to suppress, Officer Byrom never displayed a weapon, he did not physically touch Sandifer, and he was the only officer that approached the vehicle.⁵

Considering the totality of these circumstances, and viewing all of the evidence in the light most favorable to the trial court's implicit ruling that Officer Byrom's initial contact with Sandifer constituted a seizure, we conclude otherwise. We conclude that Officer Byrom's conduct did not constitute such a show of authority that would lead a reasonable person to feel that he was not free to decline Officer Byrom's requests or otherwise terminate the encounter.

⁵We recognize that our discussion of the circumstances surrounding Officer Byrom's initial interaction with Sandifer includes some events occurring beyond the point at which Sandifer stipulated that Officer Byrom had developed reasonable suspicion to detain him. We include such events in our totality-of-the-circumstances review here in order to place that interaction into its complete context.

Rather, a reasonable person under these circumstances would feel as Sandifer himself felt: free to disregard Officer Byrom and go about his own business. See *Corbin*, 85 S.W.3d at 276. We hold that Officer Byrom’s initial contact with Sandifer constituted an encounter. We therefore sustain the State’s issue.⁶

III. CONCLUSION

Having sustained the State’s issue, we reverse the trial court’s order granting Sandifer’s motion to suppress evidence and remand this case to the trial court for further proceedings.

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: MEIER, GABRIEL, and SUDDERTH, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: December 8, 2016

⁶Having concluded that Officer Byrom’s initial contact with Sandifer was an encounter, we do not address the State’s alternative argument that the initial contact was justified under the community-caretaking exception. See Tex. R. App. P. 47.1; See *Corbin*, 85 S.W.3d at 276; *Randall*, 440 S.W.3d at 79 (“Because we have held that the initial contact was not a detention, we need not determine whether a detention was justified pursuant to the community caretaking exception to the Fourth Amendment.”).