STATE OF MINNESOTA
IN COURT OF APPEALS
A16-12[redacted]

[redacted], petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed April 17, 2017
Reversed and remanded
Reyes, Judge

Wabasha County District Court
File No. [redacted]

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Lori Swanson, Attorney General, Saraswati Singh, Peter D. Magnuson, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Reyes, Judge.

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

REYES, Judge

Appellant argues that the district court erred in sustaining the revocation of his driving privileges because his Fourth Amendment rights were violated when the officer

seized him without a reasonable, articulable suspicion of criminal activity. We agree and reverse and remand.

FACTS

On March 3, 2016, at approximately 1:11 a.m., a Wabasha police officer on patrol saw appellant [redacted]'s car turn onto a narrow dirt road. The officer knew the private road led only to a commercial business, which was closed at that hour, so he followed appellant. As the officer drove down the dirt road, he observed appellant's vehicle coming toward him. The officer reversed his squad car because the road was too narrow for either car to drive past the other, and he "[did not] want to approach the vehicle from the front." The officer stopped his squad car near the end of the dirt road and exited his car. During this time, another police squad car arrived. Appellant's car was still moving when the officer got out of his squad car. The officer approached appellant's car and, after an investigation, arrested appellant for driving while intoxicated (DWI). Appellant refused to take a breath test, and his license was revoked.

Appellant filed a petition in district court challenging the revocation of his driving privileges and requesting a hearing. At the implied-consent hearing, appellant disputed, among other issues, whether the officer had a reasonable, articulable suspicion of criminal activity to stop appellant's car. Appellant testified that he stopped his car because he could not drive around the officer's squad car. The officer, on the other hand, testified that appellant could have "squeezed by." The district court determined that the officer's stop was constitutional and stated that, "the officer observed [appellant's] vehicle turn into a narrow private dirt drive that led to a business which had been closed

for hours . . . [which] gave the officer a reasonable articulable basis" to stop appellant. As a result, the district court upheld appellant's license revocation.

This appeal follows.

DECISION

Appellant challenges the district court's denial of his petition to rescind the revocation of his driver's license. Specifically, he argues that the district court erred in determining that the officer possessed the requisite reasonable, articulable suspicion of criminal activity to conduct an investigatory stop of his car. We agree.

This court reviews the district court's findings supporting an order sustaining a license revocation for clear error. *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). "Findings of fact are clearly erroneous if, on the entire evidence, [the reviewing court is] left with the definite and firm conviction that a mistake occurred." *State v. Diede*, 795 N.W.2d 836, 846-47 (Minn. 2011). We apply de novo review to questions of law in implied-consent proceedings. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010).

Appellant's arguments implicate the Fourth Amendment, which protects individuals from unreasonable searches and seizures. U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10 (providing similar protection). A warrantless search or seizure is per se unreasonable unless an exception applies. *Ellingson v. Comm'r of Pub. Safety*, 800 N.W.2d 805, 807 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). Although license-revocation is civil in nature, this court still applies the exclusionary rule as a remedy for constitutional violations in implied-consent license-revocation proceedings.

Harrison, 781 N.W.2d at 920. Therefore, failure to vindicate certain fundamental, constitutional rights in the course of an impaired-driving arrest mandates rescission of the resulting license revocation. *See, e.g.*, *Davis v. Comm'r of Pub. Safety*, 509 N.W.2d 380, 386 (Minn. App. 1993) (affirming district court's rescission of license revocation where appellant's right to counsel was not vindicated), *aff'd*, 517 N.W.2d 901 (Minn. 1994).

I. The officer's actions, including the positioning of his squad car, standing outside of the car on the narrow dirt road, and walking toward appellant's car, constituted a seizure.

The first question we must address is determining when did the officer seize appellant. Appellant argues that the seizure occurred when the officer parked his car, exited, and began walking toward appellant's car. We agree.

Under the Minnesota Constitution, a seizure occurs when, given 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, 780 (Minn. 1993); *see also State v. Askerooth*, 681 N.W.2d 353, 362 (Minn. 2004) (explaining that article I, section 10 of the Minnesota Constitution provides greater protection than the Fourth Amendment, under which a seizure occurs only "when the police use physical force or a person submits to a show of authority by police"). This court reviews a district court's determination of whether an unconstitutional seizure has occurred de novo. *Illi v. Comm'r of Pub. Safety,* 873 N.W.2d 149, 151 (Minn. App. 2015).

"Generally, no seizure occurs when an officer merely walks up to and speaks with a driver sitting in an already-stopped vehicle." *Id.* at 152. Conversely, with an already-stopped car, a police officer's actions of preventing a vehicle from moving by boxing the

vehicle in and activating the squad car's sirens constitute a seizure because these actions create the impression that a reasonable person would believe that he or she is not free to leave. *State v. Sanger*, 420 N.W.2d 241, 243 (Minn. App. 1988).

Here, the officer's squad car met appellant's vehicle head-on while appellant was driving down the private narrow road, toward the main road. The officer did not reverse his squad car out onto the main road, which would have given appellant complete access to the main road; instead, he stopped his car on the narrow dirt road, exited his vehicle, and began walking toward appellant's car while appellant was still driving toward him. Even though the officer believed appellant's car could have "squeezed by," appellant testified that he did not believe his car could drive past the officer's car in order to get to the main road.

Accordingly, considering the positioning of the officer's squad car on the narrow road, the fact that the officer exited his vehicle while appellant was still driving, and the fact that another squad car had arrived on scene, we conclude that the officer's actions constituted a seizure because no reasonable person in appellant's position would have felt free to leave. *See E.D.J.*, 502 N.W.2d at 780.

II. At the time of the seizure, the officer did not possess a reasonable, articulable suspicion of criminal activity.

Appellant next argues that, at the time the seizure occurred, the officer did not possess the requisite reasonable, articulable suspicion of criminal activity. We agree.

An investigative stop of a motor vehicle is a seizure, and in order to justify the stop, police must have a reasonable suspicion of criminal activity. *Heien v. North*

Carolina, 135 S. Ct. 530, 536 (2014); *State v. Cox*, 807 N.W.2d 447, 450 (Minn. App. 2011). While the reasonable-suspicion standard is not high, "[p]olice must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). A stop will be upheld when police can articulate a "particularized and objective basis" for the stop. *Id.* (quotation omitted) "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." *State v. Harris*, 590 N.W.2d 90, 99 (Minn. 1999) (quotation omitted).

Here, the officer did not articulate an objective basis for the seizure. There are no allegations that the officer became concerned with appellant's conduct, other than the fact that appellant was driving down a private narrow dirt road that led to a closed commercial business. In fact, the officer testified that his actions were motivated by his curiosity. This alone is insufficient to justify a seizure. *See Marben v. Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (quotation omitted).

The state argues that this case is akin to cases where we have upheld seizures based on a vehicle travelling late at night in a commercial area. But those cases involved an officer's articulation of a particularized concern about the location of the vehicle and of possible criminal activity. For example, in *Thomeczek v. Comm'r of Pub. Safety*, an officer observed an occupied vehicle parked with its lights on in a residential area that was under construction. 364 N.W.2d 471, 472 (Minn. App. 1985).

The officer suspected that "some wrongdoing [was] occurring," and this court, affirming the district court's determination that the stop was legal, concluded that the location was one "where a burglary, vandalism or theft might occur." *Id.* Similarly, in *Olmscheid v. Comm'r of Pub. Safety*, this court concluded that "[t]he officer's knowledge of previous theft from [a car dealership] and the presence of the vehicle in the early morning hours in a commercial area with no residences on a road that does not connect to another roadway provide[d] an objective and particularized basis for [the officer's] suspicion of criminal activity." 412 N.W.2d 41, 43 (Minn. App. 1987), *review denied* (Minn. Nov. 6, 1987).

In both of the aforementioned cases, the officers articulated particularized and objective bases for the stops, in that the areas where the vehicles were located were known for, or vulnerable to, criminal activity. No such circumstances exist here. The only factors to which the officer testified that would suggest criminal activity were the time of night, that he had never before seen anyone driving on that private narrow road, and that the narrow road led to a closed business. These factors are insufficient.

We conclude that the officer did not have reasonable, articulable suspicion and that the stop and seizure was unlawful. Therefore, we reverse and remand for rescission of the revocation of appellant's driver's license.

Reversed and remanded.