STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2288

State of Minnesota,
Respondent,

vs.

Brandyn Paul Springsted,
Appellant.

Filed January 15, 2008
Affirmed
Toussaint, Chief Judge

Hennepin County District Court
File No. 06-042597

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Kenneth N. Potts, Special City Attorney for the City of Wayzata, 5101 Thimsen Avenue, Suite 200, Minnetonka, MN 55345 (for respondent)

Robert M. Christensen, Robert M. Christensen, P.L.C., Barristers Trust Building, 247 Third Avenue South, Minneapolis, MN 55415 (for appellant)

Considered and decided by Toussaint, Chief Judge; Lansing, Judge; and Huspeni, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving 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

TOUSSAINT, Chief Judge

Appellant Brandyn Paul Springsted challenges his conviction of third-degree driving while impaired, arguing that he was unlawfully seized when the officer boxed him in by parking his squad car behind appellant's vehicle. Because the district court did not err in determining that appellant was not seized until he was administered a preliminary breath test, we affirm.

FACTS

At approximately 4:00 a.m. on May 7, 2006, Wayzata police officer James R. Groves, while on routine patrol in the Holiday store parking lot, noticed a male, whom he recognized as appellant, exiting the store and walking towards a vehicle that was parked in front of, and facing, the store. Groves knew appellant, a Wayzata firefighter, through work-related functions and had spoken to him on numerous occasions.

As appellant stood outside the driver's-side door to his car, Groves, in uniform, drove his marked squad car behind appellant's car, proceeding from the driver's side to the passenger's side of appellant's car, and parked it perpendicularly to appellant's car, approximately three feet behind it, so that his driver's-side door was in line with the driver's-side door of appellant's car. With his squad car parked in this position, Groves was able to communicate with appellant through his driver's side window, without exiting his vehicle. Groves did not activate his squad lights or use a spotlight. Groves did not intend to block appellant's car but admitted that appellant would not have been

able to back straight out. Appellant claims that it would have been "impossible" for him to back out while Groves's squad car was parked behind him. There was an open parking space next to appellant's car where Groves could have parked, but he instead parked behind appellant's car so that he could easily talk to appellant.

At that point, Groves did not suspect appellant of driving while intoxicated. Groves rolled down his window and began making small talk with appellant. Appellant claimed that he just wanted to go home but felt obliged to talk to Groves out of courtesy. Groves asked appellant where he was coming from, and appellant responded that he was coming from a friend's wedding reception. Groves asked appellant if the vehicle belonged to him, and appellant confirmed that it did and that he had driven it to the store. As Groves spoke to appellant, he noticed that (1) appellant's "eyes had a tired and glassy appearance to them," (2) he was unsteady on his feet and leaned on his vehicle, (3) his speech and movements were slow, and (4) his speech was slurred.

Groves got out of his squad car, walked up to appellant, and asked him how much alcohol he drank that night. Appellant responded that he drank about eight beers and one shot since 6:00 p.m. that evening. It was at this point that Groves formed the opinion that appellant was intoxicated. Appellant failed the preliminary breath test with a reading of .152 blood alcohol concentration and was arrested for driving while intoxicated.

At the *Rasmussen* hearing, appellant moved to suppress the results of the chemical tests, arguing that he had been illegally seized when Groves first parked behind his vehicle. The district court agreed that Groves did not have reasonable suspicion of criminal activity when he first pulled up behind appellant and began talking to him but

that no seizure had occurred at that point because there was no showing of authority by Groves. The district court concluded that "no reasonable person would have believed he was not free to leave," even though Groves's vehicle made it "difficult . . . if not impossible" for appellant to back out.

The district court found that the seizure took place when Groves asked appellant to submit to a preliminary breath test, and at that point, Groves had reasonable articulable suspicion that appellant had been driving while intoxicated. The district court denied appellant's motion to suppress the chemical tests, and a trial was held on stipulated facts. Appellant was found guilty of third-degree driving while impaired.

D E C I S I O N

"Where, as here, the facts are not significantly in dispute, this court's standard of review is to determine as a matter of law whether the officer's actions amounted to a seizure and if the officer had an adequate basis for the seizure." *State v. Day*, 461 N.W.2d 404, 406 (Minn. App. 1990), *review denied* (Minn. Dec. 20, 1990). We accept the district court's findings of fact unless they are clearly erroneous, but we independently apply the law to the facts. *See Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985). Whether a seizure is constitutional is a question of law reviewed de novo. *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003).

Both the state and federal constitutions protect against unreasonable searches and seizures by state actors. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A seizure may occur when a police officer has in some way restrained the liberty of a citizen by physical force or show of authority. *Day*, 461 N.W.2d at 406.

"Under the Minnesota Constitution, a person has been seized if, in view of 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) (quotation omitted) (citing *Florida v. Royer*, 460 U.S. 491, 501-02, 103 S. Ct. 1319, 1326 (1983); *United States v. Mendenhall*, 446 U.S. 544, 554-55, 100 S. Ct. 1870, 1877-78 (1980)). Circumstances that might indicate a seizure occurred include: (1) the threatening presence of several officers; (2) an officer's display of a weapon; (3) the officer physically touching the citizen; or (4) the officer's use of language or tone of voice indicating that compliance might be compelled. *Harris*, 590 N.W.2d at 98 (quotation omitted). Courts must suppress evidence gathered as a result of an unreasonable seizure. *Id.* at 99.

The reasonable person standard is objective and ensures that the scope of constitutional protection does not vary with a particular person's subjective state of mind. *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). Here, a reasonable person who was a friendly, professional acquaintance of a police officer would have believed that he was free to terminate the encounter and tell the officer that he had to leave, even if the officer's squad car was parked behind his vehicle.

Furthermore, it does not constitute a seizure for an officer to simply walk up and talk to a person standing in a public place. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980); *see also State v. Colosimo*, 669 N.W.2d 1, 4 (Minn. 2003) (holding that initial interaction where officer was merely conversing with appellant did not amount to

stop or seizure); *Norman v. Comm'r of Pub. Safety*, 409 N.W.2d 544, 545 (Minn. App. 1987) (holding that officer did not seize appellant by walking up to him while he was standing outside his vehicle). It will likely be a seizure, however, if a person is ordered out of a vehicle or if the police officer engages in some other show of authority which one would not expect between two private citizens, such as blocking a vehicle. *See Klotz v. Comm'r of Pub. Safety*, 437 N.W.2d 663, 665 (Minn. App. 1989) (holding that seizure occurred when officer blocked in appellant's vehicle and called to him, asking him to stop), *review denied* (Minn. May 24, 1989); *State v. Sanger*, 420 N.W.2d 241, 243 (Minn. App. 1988) (holding that seizure occurred when officer made show of authority by blocking car, activating lights, and honking horn). Interrogating in a "conversational manner" may be an acceptable interaction between an officer and a citizen if it is not "overbearing or harassing" in nature. *Sanger*, 420 N.W.2d at 243 (quotation omitted).

When Groves parked behind appellant's car and began speaking with him as a private citizen, Groves did not make a show of authority as a police officer. Although Groves was on duty, in uniform, and sitting in a marked squad car, he initiated contact with appellant because he knew him, not because he had any suspicion of criminal activity. Appellant conversed with Groves to be courteous because they were acquaintances. Groves did not use a threatening tone of voice or squad lights when first talking to appellant and did not summon appellant to his squad car. When Groves initially parked behind appellant, he did not exit his squad and approach appellant in a threatening way, did not physically touch appellant, and did not draw his gun. *See State v. Houston*, 654 N.W.2d 727, 732 (Minn. App. 2003) (holding no seizure took place

when officer approached citizen and began asking questions in nonthreatening tone without physical touch or gun drawn), *review denied* (Minn. Mar. 26, 2003).

Groves did not show his authority as a police officer until he exited his vehicle, approached appellant, asked him about drinking, and administered the preliminary breath test. The district court did not err in determining that the seizure occurred at this point, and not earlier when Groves first parked behind appellant's vehicle.

In order to make a constitutionally valid stop, the police officer must have a particularized and objective basis for suspecting the person stopped of criminal activity. *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695 (1981); *Berge*, 374 N.W.2d at 732. Minnesota law requires that the officer have a reasonable suspicion based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). The officer's suspicion may be based on the totality of the circumstances. *Cortez*, 449 U.S. at 417-18, 101 S. Ct. at 695; *Berge*, 374 N.W.2d at 732.

It is undisputed that Groves did not have reasonable articulable suspicion of criminal activity when he first parked behind appellant's vehicle, but that is not when the seizure occurred. The record indicates that Groves did have reasonable articulable suspicion that appellant had been driving while intoxicated at the point when appellant was seized.

While making small talk with appellant, Groves noticed that appellant's "eyes had a tired and glassy appearance to them," he was unsteady on his feet, had leaned on his

vehicle, his speech was slow and slurred, and his movements were slow. At this point, these indicia of intoxication gave Groves reasonable articulable suspicion to seize appellant. *See Hager v. Comm'r of Pub. Safety*, 382 N.W.2d 907, 911 (Minn. App. 1986) (holding that officer had reasonable suspicion to administer preliminary breath test where driver's eyes were bloodshot and watery and he smelled of alcohol); *Swapinski v. Comm'r of Pub. Safety*, 368 N.W.2d 322, 324 (Minn. App. 1985) (holding that officer had sufficient probable cause to believe that driver was intoxicated to invoke preliminary breath test where driver had balance problem and smelled of alcohol), *review denied* (Minn. Jul. 26, 1985). The district court did not err in determining that Groves, after witnessing the above indicia of intoxication, had reasonable suspicion to seize appellant and administer a preliminary breath test.

Affirmed.