STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1345

State of Minnesota,
Respondent,

vs.

James Richard Casey,
Appellant.

Filed August 11, 2009
Affirmed
Toussaint, Chief Judge

Kandiyohi County District Court
File No. 34-CV-07-674

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

Boyd Beccue, Kandiyohi County Attorney, Dain L. Olson, Assistant County Attorney, 415 Southwest Sixth Street, P.O. Box 1126, Willmar, MN 56201 (for respondent)

Robert D. Stoneburner, Stoneburner Law Office, 100 Washburne Avenue, P.O. Box 202, Paynesville, MN 56362 (for appellant)

Considered and decided by Toussaint, Chief 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

TOUSSAINT, Chief Judge

Appellant James Richard Casey challenges his conviction for driving while impaired (DWI), claiming that the district court erred in denying his motion to suppress evidence developed incident to the allegedly unlawful seizure of appellant's vehicle and person. Because the temporary detainment and seizure of appellant did not occur until after he had voluntarily left his vehicle and spoke with the deputies and because the deputies then had a reasonable and articulable suspicion to support an investigation of possible DWI, we affirm.

D E C I S I O N

At 12:40 a.m., on November 4, 2007, two sheriff's deputies were parked at a truck stop in rural Kandiyohi County. There had been reports of thefts and a burglary at the truck stop over the preceding two years. The deputies observed a vehicle enter the parking lot and drive behind the truck stop. When the vehicle did not reappear after several minutes, the deputies drove their squad cars behind the truck stop to investigate, as the truck stop was closed, and encountered appellant who had voluntarily left his vehicle. Appellant informed the deputies that he had too much to drink. The deputies observed indicia of intoxication, requested that appellant perform field sobriety tests, which he failed, and arrested him for DWI. At trial, appellant moved to dismiss the charges on the grounds that evidence was obtained through an illegal seizure. The district court denied the motion and appellant was convicted of DWI after a jury trial.

"When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing or not suppressing the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court's findings of fact under a clearly-erroneous standard, but legal determinations are reviewed de novo. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006).

I.

The first issue is whether the district court erred in concluding that the deputies' actions only amounted to a "temporary detainment and seizure" after appellant voluntarily exited his vehicle and spoke to the deputies. The United States and Minnesota Constitutions prohibit unreasonable search and seizure by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Not all contact between citizens and police officers constitutes a seizure. *In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993). 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." *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S. Ct. 1868, 1879 n.16, (1968)). A "person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877 (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.

It is not usually a seizure for an officer to walk up to a person or an already stopped vehicle in a public place. *Cobb v. Comm'r of Pub. Safety*, 410 N.W.2d 902, 903 (Minn. App. 1987); *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). So long as a reasonable person would feel free to terminate the encounter and law enforcement does not induce cooperation by coercive means, a seizure does not occur when an officer asks for identification or poses questions of a person in public. *United States v. Drayton*, 536 U.S. 194, 201, 122 S. Ct. 2105, 2110 (2002). In contrast, "it is likely to be a seizure if a person is ordered out of a vehicle, or the police engage in some other action or show of authority which one would not expect between two private citizens." *State v. Day*, 461 N.W.2d 404, 407 (Minn. App. 1990), *review denied* (Dec. 20, 1990).

Appellant argues that he was constructively seized at the time the deputies parked their squad cars behind the truck stop because they "circled" his parked car, focused their lights on appellant's license plate and vehicle, and the deputies' car placement suggested "police intent to seize and arrest" appellant. Yet, the record reflects that the deputies drove behind the building to investigate, without illuminating their emergency lights, and parked their cars so that appellant's vehicle was in no way blocked; appellant exited his car on his own volition upon seeing the deputies. There is no evidence that the deputies

engaged in a show of force, in any way indicated appellant was not free to leave, or did anything to encourage appellant to leave his vehicle. While appellant argues he felt obligated to explain his presence to the deputies, "seizure does not result when a person, due to some moral or instinctive pressure to cooperate, complies with a request to search because the other person to the encounter is a police officer." *Harris*, 590 N.W.2d at 99 (quotation omitted).

Because appellant exited his already-parked vehicle on his own volition, because the deputies did not in any way block appellant from leaving the parking lot or use any show of force, and because appellant was initially free to leave, the district court did not err in concluding that the seizure of appellant did not occur until the deputies requested that appellant submit to field sobriety tests.

II.

The second issue is whether the district court erred in concluding there was reasonable, articulable suspicion of possible criminal activity to justify the investigatory seizure that occurred after appellant's initial conversation with the deputies. 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. *Harris*, 590 N.W.2d at 99. "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." *Id.* (quotation omitted). The officer must "be able to articulate something more than an inchoate and unparticularized suspicion or hunch." *State v. Martinson*, 581 N.W.2d 846, 850 (Minn. 1998) (quotations omitted).

Appellant argues that the deputies lacked an objective basis for suspecting him of drinking until after they had seized him. The district court, however, held that the deputies had a reasonable, articulable suspicion to suspect appellant was under the influence of alcohol prior to the field sobriety tests because he told them that he had too much to drink and because the deputies observed indicia of intoxication. While the first deputy to speak with appellant did not initially observe any physical indications of intoxication, appellant's own admission less than a minute after exiting his vehicle that he had been drinking and was switching drivers because he had too many drinks to drive safely provided the deputies with a reasonable, articulable suspicion of criminal activity. This suspicion was further supported by the second deputy's observation that appellant's breath smelled of alcohol, his eyes were reddened, and his speech was slowed. On this record, the district court's conclusion that the deputies had a reasonable, articulable basis to detain appellant to further investigate DWI was not in error.

Affirmed.