STATE OF MINNESOTA
IN COURT OF APPEALS
A11-388

State of Minnesota,
Respondent,

vs.

Rand Edward Carlson,
Appellant.

Filed November 21, 2011
Reversed and remanded
Larkin, Judge

Hennepin County District Court
File No. 27-CR-10-7808

Lori A. Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Pamela M. Cecchini, St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Larkin, Judge; and Stauber, Judge.

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

LARKIN, Judge

Appellant challenges his conviction of driving while impaired (DWI), arguing that the district court erred in denying his motion to suppress evidence that was obtained

during a traffic stop. Because appellant's seizure was not justified under the emergency exception to the warrant requirement, we reverse and remand.

FACTS

At approximately 2:30 p.m. on February 20, 2010, Plymouth Police Officer Paul Johnson received a call regarding a man slumped over the steering wheel of a parked motor vehicle at French Park. Officer Johnson was provided with a description of the vehicle and the vehicle's license plate number. He was also told that there was loud music playing in the vehicle. Officer Johnson responded to the call, but when he arrived at French Park, the vehicle was no longer parked there. Instead, Officer Johnson observed the vehicle travel past his squad car and onto frozen Medicine Lake. Officer Johnson pursued the vehicle, stopped it on the lake, and identified the driver as appellant Rand Edward Carlson. Carlson was arrested and subsequently charged with misdemeanor DWI under Minn. Stat. § 169A.27 (2008).

Carlson moved to suppress the evidence obtained as a result of the traffic stop, arguing that his seizure was unlawful. At the motion hearing, Officer Johnson testified that the police department takes "slumper" calls seriously because "a slumper could be any kind of a medical condition." Officer Johnson also testified that he was concerned about Carlson's welfare, that he "didn't want him to drive onto the lake and get stuck or get hurt," and that he stopped the vehicle to make sure that Carlson "was okay." But the state did not present detailed evidence regarding Carlson's condition, such as how long he was slumped over the wheel of his vehicle or whether he was nonresponsive while he was in that position.

Officer Johnson admitted that, prior to the stop, he did not observe any traffic or equipment violations and that he ran license and registration checks, which were valid. But Officer Johnson also testified that when Carlson drove past his squad car, his eyes were glazed and he looked impaired. The district court rejected this testimony, explaining that based on the distance between the officer and Carlson, the officer was not in a position where he could have "observed the condition of [Carlson]'s eyes well enough to determine that they were glazed and thus his description of the driver as impaired lacks a factual basis."

The district court concluded that Officer Johnson did not have a reasonable basis to suspect that Carlson was engaged in criminal activity. But the district court nonetheless concluded that the stop was lawful, reasoning that, because of the short period of time between the "slumper" report and Officer Johnson's observation of the "slumper's" vehicle, Officer Johnson had a sufficient basis to stop the vehicle to determine if the driver was in need of "medical or other assistance." Carlson agreed to allow the district court to determine the issue of his guilt, and the district court convicted Carlson of DWI. This appeal follows.

D E C I S I O N

"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).

"Both the Minnesota and U.S. Constitutions protect individuals from unreasonable searches and seizures." *State v. Lopez*, 698 N.W.2d 18, 21 (Minn. App. 2005). A warrantless seizure is justified if "an officer has a particular and objective basis for suspecting the particular person seized of criminal activity." *Id.* at 22-23 (quotation omitted). A warrantless seizure may also be justified in emergency situations. *Id.* at 23. "Generally an officer responding to a call to investigate someone unconscious or sleeping in a vehicle is justified in investigating the welfare of that individual." *Id.*

In *Lopez*, a Kohl's Department Store employee called the police after several customers reported that a person was unconscious in a car in the parking lot. *Id.* at 20. An officer responded and observed Lopez sitting in the driver's seat of a vehicle, apparently unconscious. *Id.* at 21. The officer had to pound on the vehicle's window five or six times to arouse Lopez. *Id.* After she awoke, Lopez was disoriented and struggled to comply with the officer's instruction that she unlock and open the door. *Id.* Once the door was unlocked, the officer opened it and smelled alcohol. *Id.* Lopez was convicted of DWI. *Id.*

On appeal, this court held that Lopez was seized when the officer blocked her ability to exit her parking spot and that the seizure was constitutional under the emergency exception to the warrant requirement. *Id.* at 22-24. This court reasoned that "[a] law enforcement officer who receives a citizen report of an unconscious occupant in a vehicle has a reasonable basis for conducting a limited emergency check on the welfare of the occupant." *Id.* at 20.

In this case, the district court relied on *Lopez* in concluding that Carlson's seizure was lawful. Although we agree that *Lopez* is instructive, we disagree that Carlson's seizure was lawful under the standard articulated in *Lopez*, which requires a two-part inquiry: "(1) is the officer motivated by the need to render aid or assistance; and (2) under the circumstances, would a reasonable person believe that an emergency existed." *Id.* at 23. Officer Johnson's testimony that he was motivated by a desire to make sure that Carlson "was okay" shows that he believed that there was a need to render aid. But the record does not establish that a reasonable person would have believed that an emergency existed *at the time of the seizure.* *Lopez* is factually distinguishable in this regard. Lopez was unconscious at the time of the seizure, and the police officer had to wake her to make sure that she did not need assistance. Unlike Lopez, Carlson was not unconscious when Officer Johnson arrived on the scene and initiated the traffic stop. Rather, Carlson was operating his vehicle and doing so lawfully. In the absence of greater detail regarding Carlson's earlier condition, these circumstances do not support a reasonable belief that an emergency existed at the time Carlson was seized.

We observe that the holding of *Lopez* is not so broad as to constitutionally justify every traffic stop that stems from a report of a person sleeping or unconscious in a motor vehicle without regard to the person's condition at the time of the stop. Indeed, this court acknowledged the limits of its holding in *Lopez* as follows:

> If the occupant of the car had awakened and without opening the window or door clearly indicated he was not at risk, we would have a different case. We do not reach the question of whether the officer could detain or open the door

> of the vehicle absent an indication the occupant could not open the door themselves or an indication of criminal activity.

Id. at 24 n.1.

Moreover,

> [i]n applying the emergency-aid exception to the warrant requirement, two principles must be kept in mind: first, that the burden is on the state to demonstrate that police conduct was justified under the exception; and second, that an objective standard should be applied to determine the reasonableness of the officer's belief that there was an emergency.

State v. Lemieux, 726 N.W.2d 783, 788 (Minn. 2007). In this case, the state failed to demonstrate, both at the motion hearing and on appeal, an objectively reasonable belief that an emergency existed at the time of Carlson's seizure.[1] We therefore reverse.

Carlson indicates that the suppression issue was preserved for appeal pursuant to a *Lothenbach* plea.[2] The *Lothenbach* procedure is codified at Minn. R. Crim. P. 26.01,

---

[1] We do not mean to suggest that a seizure can never be constitutionally justified based on a report that a driver was previously and recently sleeping or unconscious behind the wheel of a parked vehicle. But in the absence of evidence regarding how long Carlson was slumped over the wheel of his vehicle, whether attempts were made to communicate with Carlson during this time, and whether Carlson was responsive, the record does not establish a reasonable basis to believe that an emergency existed at the time of his seizure—especially where Carlson was alert and lawfully operating his vehicle at that time.

[2] A "*Lothenbach* proceeding" is a proceeding in which a defendant stipulates to the state's case and proceeds with a court trial without waiving the right to appeal pretrial issues. *See State v. Lothenbach*, 296 N.W.2d 854, 858 (Minn. 1980) (approving this procedure). "Minn. R. Crim. P. 26.01, subd. 4, effective April 1, 2007, implements and supersedes the procedure authorized by [*Lothenbach*]." *State v. Antrim*, 764 N.W.2d 67, 69 (Minn. App. 2009). Because rule 26.01, subdivision 4, now governs proceedings in which a defendant stipulates to the prosecution's case in order to obtain review of a pretrial ruling, the rule, rather than *Lothenbach*, will be referred to where appropriate.

subdivision 4, and may be used when "the parties agree that the court's ruling on a specified pretrial issue is dispositive of the case, or that the ruling makes a contested trial unnecessary." Minn. R. Crim. P. 26.01, subd. 4(a). "The defendant and the prosecutor must acknowledge that the pretrial issue is dispositive, or that a trial will be unnecessary if the defendant prevails on appeal." *Id*., subd. 4(c). The defendant and the prosecutor must make this acknowledgment "personally, in writing or on the record." *Id*., subd. 4(g). Thus, so long as the district court determined Carlson's guilt under the procedure set forth in rule 26.01, subdivision 4, a remand is not necessary. *See id*., subd. 4(c).

The record provides some support for Carlson's assertion that the parties proceeded under rule 26.01, subdivision 4. At the conclusion of the motion hearing, the district court asked Carlson how he would like to proceed, and counsel responded "*Lothenbach* plea." But the district court scheduled "a new date" for a "stipulated facts trial," and Carlson did not provide this court with a transcript of that hearing. Moreover, the district court's order finding Carlson guilty states that Carlson "waived his right to a jury trial orally on the record and agreed to submit this case on stipulated facts to the Court as the finder of fact under Minn. R. Crim. P. 26.01, subd. 3." *Compare* Minn. R. Crim. P. 26.01, subd. 3 (providing for a trial on stipulated facts) *with* Minn. R. Crim. P. 26.01, subd. 4 (providing for a stipulation to the prosecution's case to obtain review of a pretrial ruling). Because we cannot determine whether the parties agreed that a trial

would be unnecessary if Carlson prevailed on appeal, we remand for further proceedings consistent with this opinion.

Reversed and remanded.

Dated:

Judge Michelle A. Larkin