STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0716

State of Minnesota,
Respondent,

vs.

Antwon Demetrius Robinson,
Appellant.

Filed May 27, 2014
Reversed
Rodenberg, Judge
Dissenting, Johnson, Judge

Stearns County District Court
File No. 73-CR-11-4011

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

Matthew A. Staehling, St. Cloud City Attorney, Mark C. Hansen, Assistant City Attorney, St. Cloud, Minnesota (for respondent)

Elizabeth A. Larsen, Benjamin D. Eastburn, Special Assistant Public Defenders, Leonard, Street & Deinard, Professional Association, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Cleary, Chief Judge; and Rodenberg, Judge.

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

RODENBERG, Judge

On appeal from his conviction of third-degree test refusal in violation of Minn. Stat. § 169.20, subd. 2 (2010), appellant Antwon Demetrius Robinson argues that law

enforcement officers (1) stopped his vehicle without reasonable suspicion and (2) unlawfully expanded the scope of the investigative stop and illegally arrested him. He contends that the district court erred in denying his motion to suppress evidence. Because law enforcement improperly expanded the scope of the investigative stop and arrested appellant without probable cause to do so, we suppress the evidence resulting from the unlawful arrest and reverse the conviction.

FACTS

On April 10, 2011, St. Cloud police received information that a domestic assault had occurred in a St. Cloud residence and that there were firearms and controlled substances in the home. Police officers kept watch on the house while they waited for a warrant authorizing a search of it for evidence of crime. Police established what was described in testimony as a "perimeter," with orders to stop all vehicles leaving the residence. Between 5:00 and 5:30 a.m., a black Yukon arrived at the home. Four men exited the vehicle and entered the residence. About 10 to 15 minutes later, appellant exited the home, entered the black Yukon, and began to drive away from the home. Nothing in the record suggests that appellant was observed carrying anything out of the residence or placing anything into the rear cargo area of the Yukon.

St. Cloud Police Officer Scott Wenshau was ordered to follow and stop the Yukon because appellant matched the description of the suspect involved in the domestic assault. But Officer Wenshau testified that he did not stop the Yukon until he "developed [his] own probable cause to stop it." Officer Wenshau testified that the Yukon was speeding, reaching speeds of around 50 miles per hour in a 30-mile-per-hour zone. Before

signaling the Yukon to stop, Officer Wenshau radioed Minnesota State Trooper Christopher James for assistance. Trooper James had to travel around 50 miles per hour "to keep up with the" Yukon. Both Officer Wenshau and Trooper James turned on their emergency lights, and appellant promptly pulled over. One officer pulled up behind the Yukon and the other pulled up behind and to the left of it. At some point, a third police officer also arrived on the scene. The stop and subsequent events were recorded by a dashboard camera.

Following verbal instructions from Officer Wenshau given by loudspeaker, appellant opened his car door using his left hand, exited the vehicle, pulled up his shirt, and then walked backward toward the officers. The officers determined that appellant was not the suspect they were looking for in the domestic-assault case. Appellant was handcuffed and placed in the back seat of a squad car. The three officers searched the Yukon for eight to ten minutes. Although the officers did not find firearms or narcotics, they found swords in the back of the vehicle. At some point, appellant asked if he could go home, but he was told "no." After the Yukon was searched by the three police officers, one of the officers can be heard to say "Lock 'er up. Shut 'er up and lock 'er up." At some point not clearly revealed by the record, one police officer suggested that he had smelled an odor of alcohol on appellant.[1] After the Yukon had been searched and apparently locked up, Trooper James required appellant to perform field sobriety tests and a preliminary breath test. These things were also recorded by the dashboard camera,

[1] The third officer did not testify at the omnibus hearing. Trooper James testified that he became aware of the possibility of alcohol involvement approximately five minutes into the stop, by which time appellant was cuffed and locked in the squad car's backseat.

and the recording is in the record on appeal. The preliminary breath test showed an alcohol concentration of .194, and Trooper James placed appellant under arrest.

After arriving at the jail, Trooper James read appellant the Motor Vehicle Implied Consent Advisory. Appellant indicated that he understood the advisory, and he declined to consult with an attorney. He refused to take a breath test "because I'm already refusal." Appellant was charged with one count of fourth-degree driving while impaired and one count of third-degree test refusal.

Appellant moved to suppress evidence resulting from the investigative stop and derivatively moved to dismiss. The district court denied appellant's motions. In its detailed memorandum accompanying the order, the district court concluded that Officer Wenshau's testimony lacked credibility. Specifically, the district court noted discrepancies between Officer Wenshau's testimony and his original report, and between Officer Wenshau's testimony and the testimony of the other officers. But the district court concluded:

> Based on the report that a firearm and narcotics were present in the residence, the court finds law enforcement had reasonable articulable suspicion to stop [appellant]'s vehicle to investigate (1) whether [appellant] was the suspect of the domestic assault and (2) whether [appellant] had removed a firearm or narcotics from the residence.

The district court also concluded that the investigative stop had not been illegally expanded because "the officers' actions when conducting the traffic stop were reasonable based on officer safety. Additionally, the length of detention—approximately 10 to 15 minutes—was also reasonable under the circumstances." And the district court

concluded that appellant was not under de facto arrest when he was handcuffed and placed in the back of the squad car, even though this was "a very close call."

Appellant waived his right to a trial and stipulated to the state's case under Minn. R. Crim. P. 26.01, subd. 4. The parties agreed that the pretrial ruling was dispositive and that no trial would be required if the pretrial ruling was reversed on appeal.

On December 21, 2012, the district court found appellant not guilty of fourth-degree driving while impaired because the record contained no evidence that appellant "exhibited any driving conduct that would indicate that he did not have control of the vehicle." It concluded that the state failed to prove driving while impaired beyond a reasonable doubt. But the district court found appellant guilty of third-degree test refusal. This appeal followed.

D E C I S I O N

"When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). We review reasonable suspicion and probable cause determinations de novo. *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997). And we give deference to the district court's credibility determinations. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012).

"The United States and Minnesota Constitutions protect 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (quoting U.S. Const.

amend. IV); *see also* Minn. Const. art. I, § 10. The analysis of an investigative seizure "involves a dual inquiry. First, we ask whether the stop was justified at its inception. . . . Second, we ask whether the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (citing *Terry v. Ohio*, 392 U.S. 1, 19-20, 88 S. Ct. 1868, 1879 (1968)) (other citations omitted).

Legality of the investigative stop

A police officer may stop and detain an individual briefly for the purpose of investigation when the officer has a reasonable, articulable suspicion of criminal activity. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). "The reasonable-suspicion standard is not high" and is "less demanding than the standard for probable cause." *Diede*, 795 N.W.2d at 843 (quotations omitted). "The police must only show that the stop was not the product of mere whim, caprice or idle curiosity, but was based upon 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) (quoting *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880). We consider the events "leading up to the stop or search" to decide whether the totality of the circumstances, "viewed from the standpoint of an objectively reasonable police officer, amount[s] to reasonable suspicion" of criminal activity. *State v. Martinson*, 581 N.W.2d 846, 850 (Minn. 1998).

Here, appellant was "seized" when Officer Wenshau and Trooper James activated their emergency lights and pulled their squad cars behind and beside the Yukon. *See Klamar*, 823 N.W.2d at 692 ("It is generally established that a seizure occurs when a

police officer stops a vehicle."). Appellant argues that the officers lacked reasonable suspicion for the investigative stop because the stop was pretextual and based on a mere hunch. The officers were operating under orders to stop any vehicle leaving the residence. As appellant argues, "Officer Wenshau and Trooper James were going to stop [appellant]'s vehicle, with or without any reasonable, articulable suspicion."

The record supports the district court's conclusion that the investigative stop was neither pretextual nor based on a mere hunch. Appellant had just left a residence where a domestic assault had been reported, and police had information that there were firearms and narcotics located in the residence. This happened between 5:00 and 5:30 a.m. And both Officer Wenshau and Trooper James were told that the driver of the Yukon matched the general description of the domestic-assault suspect. Based on the events leading up to the investigative stop, the officers had reasonable suspicion that the Yukon and its driver were related to the reported criminal activity in the residence. *See Martinson*, 581 N.W.2d at 850; *Klamar*, 823 N.W.2d at 691 ("[We] may consider the officer's experience, general knowledge, and observations; background information, including the nature of the offense suspected and the time and location of the seizure; and anything else that is relevant."). Moreover, the officers' reasonable suspicion related specifically to the driver of the Yukon, the only person in it. *See Askerooth*, 681 N.W.2d at 364 ("[T]he basis for justifying an intrusion during a minor traffic stop [must] be individualized to the driver toward whom the intrusion is directed."). The investigative stop was justified.

Expansion of the investigative stop

"An initially valid stop may become invalid if it becomes 'intolerable' in its 'intensity or scope.'" *Askerooth*, 681 N.W.2d at 364 (quoting *Terry*, 392 U.S. at 17-18, 88 S. Ct. at 1878). Any "incremental intrusion" during an investigative stop must be justified by the circumstances; when an intrusion is "not closely related to the initial justification for the search or seizure," there must be "independent probable cause or reasonableness to justify that particular intrusion." *Id.* An investigative detention may continue "as long as the reasonable suspicion for the detention remains." *State v. Moffatt*, 450 N.W.2d 116, 119 (Minn. 1990).

Generally, in the course of a *Terry* stop, an officer is authorized to take such steps as are reasonably necessary to protect his or her personal safety and to maintain the status quo during the course of the stop. *United States v. Hensley*, 469 U.S. 221, 235, 105 S. Ct. 675, 683-84 (1985). "[A] police officer may order a driver out of a lawfully stopped vehicle without an articulated reason." *Askerooth*, 681 N.W.2d at 367. And in the interest of officer safety, when an officer has a reasonable, articulable suspicion that a suspect is armed, the officer may "lawfully make a forcible investigative stop" to determine whether the suspect possesses a weapon. *State v. Gilchrist*, 299 N.W.2d 913, 916 (Minn. 1980). Here, the officers knew that the Yukon departed from a residence where an assault had been recently reported and that drugs and guns might be found in the residence. Police were waiting for a search warrant to be issued, and were attempting to ensure that evidence was not lost. Based on the unique circumstances and the concern for officer safety, asking appellant to exit the Yukon, lift up his shirt, and walk backwards

was supported by reasonable suspicion, and therefore justified. And these actions were properly related to the circumstances that led to the stop. *See Askerooth*, 681 N.W.2d at 364. At the time of the stop, the officers were unsure whether the driver of the Yukon was the domestic-assault suspect.

But further expansion of the investigative stop, including handcuffing appellant and placing him in the back of a squad car, was not justified. The handcuffs should have been removed once the officers verified that appellant was unarmed and was not the person suspected of having committed the reported assault. *See State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999) (allowing the use of handcuffs until suspects were patted for weapons, at which point the handcuffs were removed); 4 Wayne R. LaFave, *Search and Seizure*, § 9.2(d), at 411 (5th ed. 2012) ("[S]uch restraint must be temporary, and thus, absent other threatening circumstances, once the pat-down reveals the absence of weapons the handcuffs should be removed." (quotations omitted)). The investigative stop ended when the officers determined that appellant was not the domestic-abuse suspect and was not armed. *See State v. Blacksten*, 507 N.W.2d 842, 846 (Minn. 1993) (a detention may not last longer than "reasonably necessary to effectuate the purpose of the stop"). Any further expansion of the stop required "independent probable cause or reasonableness." *See Askerooth*, 681 N.W.2d at 364.

The record does not support a finding that the officers developed independent probable cause or reasonable suspicion for expansion of the stop, or for arresting appellant. Without Officer Wenshau's testimony, which the district court found to be not credible, there is no record evidence of bad driving. Based on our careful review of the

dashboard video, appellant displayed no indicia of intoxication when he exited his vehicle, pulled up his shirt, turned around, and walked backward toward the officers. In fact, and consistent with the district court's acquittal of appellant of the driving-while-impaired charge, appellant's performance of this complex maneuver was amazingly deft. There is no record evidence of appellant's intoxication until after the unlawful expansion of the stop, after appellant was handcuffed and placed in the back of the squad car for approximately 15 minutes. During this time, three police officers performed a thorough but warrantless search of the Yukon, removing bulky items that required two officers to lift despite nothing in the record suggesting that appellant could have put such bulky items into the vehicle by himself as he left the residence. The purpose of the original investigative stop was to determine whether the driver of the Yukon (1) was the assault suspect and/or (2) had removed evidence from the home that police were surrounding while they waited for a search warrant. There was no testimony that officers observed anything large being placed in the Yukon or that anything had been put in the rear cargo area. We conclude that the expansion of the investigative stop to include an extensive and warrantless search of the vehicle violated appellant's constitutional right against an unreasonable seizure. *See id.*

We also conclude, as an alternative and sufficient basis for suppression of the evidence following from the expansion of the investigative stop, that appellant was placed under de facto arrest without probable cause. "The ultimate test to be used in determining whether a suspect was under arrest is whether a reasonable person would

have concluded, under the circumstances, that he was under arrest and not free to go." *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984).

> In determining whether a police officer's conduct turned an investigative stop into an unlawful arrest, courts must specifically consider the aggressiveness of the police methods and the intrusiveness of the stop against the justification for the use of such tactics, i.e., whether the officer had a sufficient basis to fear for his or her safety.

State v. Balenger, 667 N.W.2d 133, 139 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003). "[B]riefly handcuffing a suspect while the police sort out the scene of an investigation does not per se transform an investigatory detention into an arrest, nor does placing the suspect in the back of a squad car while the investigation proceeds." *Munson*, 594 N.W.2d at 137.

Our supreme court has held that placing a suspect in a squad car from which the suspect is not free to leave is not, in all instances, a de facto arrest. *Moffatt*, 450 N.W.2d at 119-20. In *Moffatt*, three burglary suspects were placed in three different squad cars because, among other reasons, the investigating officers wanted to be able to question the suspects separately. *Id.* at 118. The suspects were not, like here, handcuffed while they were detained in the squad cars. *Id.* The supreme court stated that "the officers were merely detaining the men while they conducted a limited investigation to see if, as they suspected, the men [were involved in a] burglary." *Id.* at 120.

But our supreme court has also held, in a case decided after *Moffatt*, that a suspect "ordered to the ground at gunpoint, handcuffed, and placed in [a] squad car," and held for over an hour was de facto under arrest. *Blacksten*, 507 N.W.2d at 847. "No reasonable

person would have believed that he or she was free to leave under these circumstances." *Id.* at 846. And, because there was no probable cause to support the arrest, the supreme court held that evidence discovered as the fruits of the unlawful arrest must be suppressed. *Id.* at 847.

Unlike the situation in *Moffatt*, appellant was the only person in the vehicle that police stopped for investigation. There were multiple police officers in multiple squad cars at the investigatory stop as appellant was ordered from the Yukon. The officers very quickly dispelled any belief or even concern that appellant might be armed or that he might be the person suspected of assault back at the residence from which he had recently departed. And while the officers did conduct a search of the Yukon, that search was unreasonably expansive. Handcuffing appellant and holding him in the back seat of a squad car was not justified by any need to "freeze the situation." *Cf. Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108-09 (Minn. 1987) (upholding an investigative stop of the only car in the area shortly after a report of a burglary in progress in an effort to "freeze the situation").

As the officers are ending their search of the Yukon, the dashboard video of the investigative stop reveals one officer's voice saying: "Lock 'er up. Shut 'er up and lock 'er up." At that point, appellant has been handcuffed and locked in a police car and no field sobriety testing has been done. It is evident that appellant not only was not free to leave; he was not going to be free to leave. He was not going anywhere other than to jail. He was under arrest.

The district court held that handcuffing appellant and placing him in the back of the squad car was an "investigative detention" justified while police "sort[ed] out" the scene, citing *State v. Walsh*, 495 N.W.2d 602, 605 (Minn. 1993). But the officers identified appellant as not being the domestic-assault suspect, yet searched his vehicle without a warrant for eight to ten minutes. And none of the three constitutionally recognized exceptions to the warrant requirement applies.

The search of appellant's vehicle was not a search incident to a lawful arrest because the officers did not have probable cause to lawfully arrest appellant. *See Chambers v. Maroney*, 399 U.S. 42, 46, 90 S. Ct. 1975, 1978-79 (1970) (explaining that, because law enforcement had probable cause to arrest the four occupants of the vehicle for robbery, the search of the vehicle was justified). Moreover, the search of the vehicle exceeded the scope of a lawful search incident to arrest in any event because appellant was secured in the back of a squad car before the search and officers had already determined that appellant was not the domestic-assault suspect. *See Arizona v. Gant*, 556 U.S. 332, 343, 129 S. Ct. 1710, 1719 (2009) (explaining that police may "search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search" or "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." (quotation omitted)).

The search of appellant's vehicle also is not justified under the automobile exception to the warrant requirement because the officers did not have probable cause to believe that they would discover contraband in the vehicle. *See United States v. Ross*,

456 U.S. 798, 807-08, 102 S. Ct. 2157, 2164 (1982). As explained above, the officers merely had reasonable suspicion to conduct an investigative stop of appellant's vehicle. Finally, the search does not qualify as an inventory search of the vehicle because appellant's vehicle was not within police custody and the officers were not attempting to secure and protect appellant's property. *See Colorado v. Bertine*, 479 U.S. 367, 372, 107 S. Ct. 738, 741 (1987) (stating that an inventory search is "designed to secure and protect vehicles and their contents within police custody"). The officers searched appellant's vehicle "for the sole purpose of investigation." *Id.* Because no exception to the warrant requirement applies here, detaining appellant during the unlawful search of his vehicle was not permissible.[2]

Any evidence discovered as a result of a violation of an individual's constitutional right to be free from unreasonable searches and seizures must be suppressed. *Askerooth*, 681 N.W.2d at 370. Here, the officers discovered evidence of appellant's consumption of alcohol as a result of their unconstitutional expansion of the investigative stop and de facto arrest of appellant. Therefore, this evidence must be suppressed. *See id.*

Evidence of appellant's test refusal also must be suppressed because it was discovered as a result of an unreasonable seizure. *See id.* Appellant's test refusal occurred only after the illegal arrest and expansion of the investigative stop without

[2] Absent a constitutional basis to do so, the officers had no right to "diligently search[]" appellant's vehicle without a warrant and based on nothing more than "reasonable suspicion." There was no constitutional basis for the officers to search appellant's vehicle. And appellant was detained solely so that the officers could conduct a constitutionally-impermissible search. *Cf. Moffatt*, 450 N.W.2d at 119-20 (explaining that detention of the appellant was lawful during the officers' reasonable investigation).

reasonable suspicion. The evidence of appellant's test refusal was the direct result of the illegality and therefore must be suppressed as "fruit of the poisonous tree." *See Wong Sun v. United States*, 371 U.S. 471, 487-88, 83 S. Ct. 407, 417 (1963) (explaining that in determining whether evidence is "fruit of the poisonous tree," the question "is whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint" (quotation omitted)); *State v. Warndahl*, 436 N.W.2d 770, 776 (Minn. 1989) (explaining that "whether it is likely that the evidence would have been obtained in the absence of the illegality" is one factor to consider when determining whether evidence is "fruit of the poisonous tree"). Because, as the district court found, the record contains no credible evidence of bad driving and because evidence of appellant's claimed impairment and test refusal would not have been obtained in the absence of the illegal seizure, the test-refusal evidence must be suppressed.

Appellant waived his right to a jury trial and stipulated to the state's case under Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the pretrial ruling upholding the constitutionality of the investigative stop and seizure. According to the requirements of rule 26.01, the parties agreed that the pretrial ruling was dispositive and that no trial would be required if the pretrial ruling was reversed on appeal. Therefore, because we reverse the district court's pretrial ruling and suppress the evidence of appellant's test refusal, we also reverse appellant's conviction of third-degree test refusal.

Reversed.

JOHNSON, Judge (dissenting)

I respectfully dissent from the opinion of the court. Law-enforcement officers did not unlawfully expand the scope of the valid investigatory stop, and did not effect a *de facto* arrest, when they handcuffed Robinson and placed him in the back seat of a squad car for approximately 15 minutes while they diligently searched his vehicle based on a reasonable suspicion of unlawful possession of controlled substances and firearms. After the original investigation was completed, the officers justifiably expanded the scope of the stop by conducting an investigation into whether Robinson had committed the offense of driving while impaired (DWI). The second investigation is justified by information the officers acquired while conducting the first investigation, which gave rise to a reasonable suspicion that Robinson was intoxicated. Thus, I would conclude that the district court did not err by denying Robinson's motion to suppress evidence.

A.

I respectfully disagree with the majority's conclusion that the officers unlawfully expanded the scope of the investigative stop by the manner in which they detained Robinson while they searched his vehicle.

The United States Supreme Court and the Minnesota Supreme Court have expressly declined to adopt any bright-line rules relating to the scope of investigative detentions. *United States v. Sharpe*, 470 U.S. 675, 686, 105 S. Ct. 1568, 1575 (1985); *State v. Moffatt*, 450 N.W.2d 116, 119 (Minn. 1990). With respect to the duration of an investigative stop, "[t]he general rule is that the detention of the person stopped may not continue indefinitely but only as long as reasonably necessary to effectuate the purpose of

the stop." *State v. Blacksten*, 507 N.W.2d 842, 846 (Minn. 1993) (citing *Sharpe*, 470 U.S. at 686, 105 S. Ct. at 1575). An investigative stop is not too long in duration if "the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." *Sharpe*, 470 U.S. at 686, 105 S. Ct. at 1575. With respect to the nature of an investigative stop, the general rule is that the restrictions on a person's liberty during the stop must be justified by a governmental interest that outweighs the suspect's interest in being free from "arbitrary interference by law officers." *State v. Askerooth*, 681 N.W.2d 353, 365 (Minn. 2004) (quotation omitted).

In this case, the officers were permitted to conduct a limited search of Robinson's vehicle even after they determined that he was not the person who was suspected of domestic assault and was unarmed. The officers had a reasonable suspicion that Robinson's vehicle might contain unlawful controlled substances and unlawful firearms because Robinson had just departed from a house in which such contraband was reported to exist. The investigative stop retained its validity while officers diligently conducted a search of the vehicle, which lasted only eight to ten minutes. The search was "tied to and justified by . . . the original legitimate purpose of the stop," which was to investigate the possible unlawful possession of controlled substances and firearms. *See State v. Flowers*, 734 N.W.2d 239, 251 (Minn. 2007). Robinson does not argue that the investigative stop was unreasonable in scope on the ground that officers searched the cargo area or otherwise exceeded the proper scope of a limited search. In any event, the officers' search of the vehicle did not yield any incriminating evidence.

In addition, the officers did not unlawfully expand the scope of the investigative stop by handcuffing Robinson and placing him in the back seat of a squad car. There is no *per se* rule that precludes officers from handcuffing a suspect and placing him in the back seat of a squad car during an investigative stop. In *State v. Munson*, 594 N.W.2d 128 (Minn. 1999), the supreme court noted in its statement of facts that officers removed the suspect's handcuffs after conducting a pat-frisk and before placing him in a squad car, *id.* at 133, but the opinion does not say that such a practice is constitutionally required. As a general rule, officers reasonably may detain a suspect while they conduct a lawful search to ensure officer safety, to protect against interference with the search, and to prevent the suspect from fleeing, and those purposes are best served if "officers routinely exercise unquestioned command of the situation." *Michigan v. Summers*, 452 U.S. 692, 703, 101 S. Ct. 2587, 2594 (1981) (affirming detention of occupant of residence searched pursuant to warrant). In the context of an investigative stop of a vehicle, an officer reasonably may apply this principle by choosing to "not let people move around in ways that could jeopardize his safety." *Brendlin v. California*, 551 U.S. 249, 258, 127 S. Ct. 2400, 2407 (2007); *see also Maryland v. Wilson*, 519 U.S. 408, 414, 117 S. Ct. 882, 886 (1997). A suspect who is handcuffed during an investigative detention experiences an additional restriction on his liberty, but the additional restriction is minimal and, thus, may be justified by concerns for officer safety in a potentially dangerous situation. *See Muehler v. Mena*, 544 U.S. 93, 98-100, 125 S. Ct. 1465, 1470-71 (2005) (approving use of handcuffs in detention incident to lawful search of home for weapons used in gang-related shooting).

The reasonableness of the detention in this case is illustrated by *Moffatt*, a case in which officers frisked three men and confined them in the back seats of separate squad cars for more than an hour while the officers conducted an investigative search of their vehicle and the surrounding area for evidence of a burglary. 450 N.W.2d at 118. In discussing whether the scope of the investigative stop was reasonable, the supreme court reasoned that the officers "would have been foolish" to leave the suspects in the vehicle and also "would have been foolish to get the men out of the car and just let them stand around outside." *Id.* at 120. The court continued, "The best decision in this case clearly was to remove the men from the car and place them in separate cars. What the officers did was reasonable and prudent." *Id.*[3] The supreme court also made clear that officers may investigate a suspected crime in any reasonable manner and are not required to select the most expeditious or least-restrictive approach:

> The fact that the police in a given case might have investigated the case in a different way arguably taking less time does not mean that the police acted unreasonably. As the Court said in *Sharpe*, "The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or [to] pursue it."

[3]The present case is very different from *Askerooth*, in which the driver was stopped for failing to stop at a stop sign and could not produce a driver's license. 681 N.W.2d at 357. The officer ordered the driver out of the vehicle, conducted a pat-down search for weapons, and confined the driver in the back of his squad car while he investigated the driver's identity and license status. *Id.* The supreme court held that the squad-car detention was unlawful, primarily because the driver was suspected of only "a minor traffic offense." *Id.* at 365; *see also State v. Varnado*, 582 N.W.2d 886, 891-92 (Minn. 1998) (holding that officer improperly detained in squad car person who drove with cracked windshield and did not have driver's license). The supreme court specifically stated in *Askerooth* that the facts of that case should be distinguished from the facts of *Moffatt*, in which officers were investigating a "serious crime," with "the possibility of weapons being in the car." *Id.* at 367 n.9.

Id. at 119 (quoting *Sharpe*, 470 U.S. at 687, 105 S. Ct. at 1576); *see also State v. Herem*, 384 N.W.2d 880, 883 (Minn. 1986) (reasoning, for *Miranda* purposes, that "simply requiring defendant to sit in a police car for a short time . . . did not take the situation beyond the realm of the ordinary traffic stop").

The reasonableness of the detention in this case also is illustrated by the federal caselaw. Some concerns have been expressed about the unnecessary use of handcuffs on persons who are not under formal arrest. *See, e.g.*, *Muehler*, 544 U.S. at 102-04, 125 S. Ct. at 1472-73 (Kennedy, J., concurring); *Rabin v. Flynn*, 725 F.3d 628, 636-43 (7th Cir. 2013) (Rovner, J., concurring). Nonetheless, the federal circuit courts consistently have upheld investigative stops and detentions similar to the investigative stop and detention in this case. *See United States v. Bullock*, 632 F.3d 1004, 1016 (7th Cir. 2011) (holding that officers reasonably handcuffed drug-trafficking suspect and placed him in squad car during investigation as "precaution[] against potentially violent behavior"); *United States v. Stewart*, 388 F.3d 1079, 1084-85 (7th Cir. 2004) (holding that officers did not arrest armed bank-robbery suspect by handcuffing him and detaining him in squad car for ten minutes); *United States v. Navarrete-Barron*, 192 F.3d 786, 791 (8th Cir. 1999) (citing cases) (holding that officers did not exceed scope of *Terry* stop by handcuffing and placing drug-trafficking suspect in police car during brief search of vehicle).

Thus, I would conclude that the officers did not unlawfully expand the scope of the stop by handcuffing Robinson and placing him in the back of a squad car while they diligently conducted a search of his vehicle.

B.

I respectfully disagree as well with the majority's conclusion that handcuffing Robinson and placing him in the back of a squad car constituted a *de facto* arrest.

The United States Supreme Court has used the term "*de facto* arrest" on only one occasion, in *Sharpe*. The lower court's opinion had held that "the length of the [defendant's] detention alone transformed it from a *Terry* stop into a de facto arrest." 470 U.S. at 683, 105 S. Ct. at 1574. The Supreme Court reversed because law-enforcement officers conducted a diligent investigation and did not unnecessarily prolong the defendant's detention. *Id.* at 682-88, 105 S. Ct. at 1573-76. The *Sharpe* Court nonetheless recognized that there may arise "difficult line-drawing problems in distinguishing an investigative stop from a *de facto* arrest." *Id.* at 685, 105 S. Ct. at 1575; *see also Florida v. Royer*, 460 U.S. 491, 506, 103 S. Ct. 1319, 1329 (1983) (discussing fact-specific nature of "determining when a seizure exceeds the bounds of an investigative stop"). Similarly, the Minnesota Supreme Court has used the term "*de facto* arrest" to describe the situation in which a suspect was not formally placed under arrest but effectively was arrested because the circumstances of the detention exceeded the scope of a lawful investigative stop. *See, e.g.*, *Blacksten*, 507 N.W.2d at 846-47; *see also Askerooth*, 681 N.W.2d at 371 (Russell A. Anderson, J., concurring specially). But there is no meaningful difference between an arrest and a *de facto* arrest in terms of the restriction on a person's liberty or the requisite justification for the restriction. *See Blacksten*, 507 N.W.2d at 846; *Moffatt*, 450 N.W.2d at 119-20.

The opinion of the court resolves this issue according to "[t]he ultimate test to be used in determining whether a suspect was under arrest," *i.e.*, "whether a reasonable person would have concluded, under the circumstances, that he was under arrest and not free to go." *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984). The supreme court later clarified the *Beckman* test by stating that "the 'not free to leave' language is unfortunate, because a person who is being detained temporarily is not free to leave during the period of detention, yet that does not convert the detention into an arrest." *Moffatt*, 450 N.W.2d at 120. The first requirement of *Beckman* is essential because, regardless whether a suspect is under arrest or under investigative detention, the suspect is not free to leave the scene; rather, a person is free to disengage from an encounter with an officer only if the person is neither arrested nor detained. *See Illinois v. Wardlow*, 528 U.S. 119, 125, 120 S. Ct. 673, 676 (2000); *see also Royer*, 460 U.S. at 497-98, 103 S. Ct. at 1324; *United States v. Mendenhall*, 446 U.S. 544, 550-57, 100 S. Ct. 1870, 1875-78 (1980) (plurality opinion). Thus, in light of *Moffatt*, courts must insist on *both* requirements of the *Beckman* test: a reasonable person in the suspect's position must have believed, first, that he was "under arrest" and, second, that he was "not free to go." 354 N.W.2d at 436; *cf. Stave v. Vereb*, 643 N.W.2d 342, 347 (Minn. App. 2002); *State v. Carver*, 577 N.W.2d 245, 248 (Minn. App. 1998).

In this case, Robinson testified that, at some point before he was formally arrested, he asked one of the officers, "Can I go home?" He testified that the officer simply answered "no," without elaboration. This evidence, without more, does not convert Robinson's detention into a *de facto* arrest. Robinson did not testify that he believed that

he was under arrest, and a reasonable person in his position would not have had such a belief. In short, the evidence does not satisfy the first part of the *Beckman* test. *See Moffatt*, 450 N.W.2d at 120. The mere fact that a suspect believes that he is not free to leave is insufficient to convert a detention into a *de facto* arrest. *See id*. Furthermore, Robinson was detained for no more than 15 minutes, which is significantly shorter than the detention in *Moffatt*, which lasted more than one hour. *See id.* at 118.

Robinson has not argued, either to the district court or to this court, that he was under *de facto* arrest on the ground that the officers locked his vehicle after searching it. As far as the record reveals, Robinson was unaware of that fact, which means that it adds nothing to the *Beckman* analysis. Furthermore, there was no testimony at the suppression hearing about the officers' decision to secure Robinson's vehicle in that manner. The district court did not mention the issue in its written order, apparently because neither party presented arguments on the issue. To the extent that this court's opinion is based on the officers' decision to secure Robinson's vehicle, the court is drawing inferences from evidence that has not been tested by cross-examination or by the adversarial process.

The facts of this case are very different from the facts of *Blacksten*, in which the supreme court concluded that the suspect "was *de facto* under arrest from the time he was ordered to the ground at gunpoint, handcuffed, and placed in the squad car." 507 N.W.2d at 847. The supreme court based that conclusion on the fact that the officer who detained the suspect "had no intention of conducting any investigation while detaining him," such that "the stop was not a reasonable pre-arrest detention intended to freeze the scene so

that an investigation could be made." *Id.* at 846. In this case, however, officers placed Robinson in the squad car so that they could conduct a search of his vehicle, and they detained him in the squad car only as long as necessary to allow that search to be completed.

Thus, I would conclude that the officers did not place Robinson under *de facto* arrest when they handcuffed him and placed him in the back of a squad car.

In both the district court and this court, Robinson has not challenged the premise that, before completing the search of his vehicle, officers acquired information that gave them a reasonable suspicion that Robinson had committed the offense of DWI. That reasonable suspicion justified the expansion of the scope of the stop to include an investigation into DWI. *Askerooth*, 681 N.W.2d at 364; *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002).

For the reasons stated above, I would conclude that the district court did not err by denying Robinson's pre-trial motion to suppress evidence. Accordingly, I would affirm Robinson's conviction.