STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0865

State of Minnesota,
Respondent,

vs.

Seth Michael Hambleton,
Appellant.

Filed April 7, 2014
Affirmed
Rodenberg, Judge

Anoka County District Court
File No. 02-CR-12-1618

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

Tony Palumbo, Anoka County Attorney, Robert D. Goodell, Assistant County Attorney, Anoka, Minnesota (for respondent)

Mark D. Kelly, St. Paul, Minnesota (for appellant)

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

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

RODENBERG, Judge

Appellant Seth Michael Hambleton appeals from his convictions of first-degree driving while impaired in violation of Minn. Stat. § 169A.20, subd. 1(1), (5) (2010),

alleging that the evidence supporting his convictions should have been suppressed as having been obtained in violation of his constitutional rights. We affirm.

FACTS

Officer Derek Nelson was on patrol in the city of Anoka on Sunday, March 4, 2012. At approximately 4:17 p.m., he received a call from dispatch regarding a motor-vehicle crash at the corner of Highway 47 and Pleasant Street. According to the report, there had been a motor-vehicle accident involving a vehicle striking the front of a retail store, located on the southeast corner of that intersection. The retail store's burglar alarm was sounding, apparently as a result of the crash. The report did not provide a description of the driver of the crashed truck, but indicated that the driver may have left the area. The report also indicated that another vehicle may have been involved in the crash. It took Officer Nelson approximately three minutes to arrive at the scene after receiving the call.

As Officer Nelson neared the crash scene in his squad car, he noticed a Ford Taurus parked in the southeast corner of a parking lot just east of the retail store. Officer Nelson noticed that the driver of the Taurus continued to watch the squad car as it passed. Continuing west, Officer Nelson spotted a crashed pickup truck against a street light at the corner of Highway 47 and Pleasant Street. The truck was heavily damaged, resting atop a snowbank, and appeared to be unoccupied. Officer Nelson also noticed a lone pedestrian, later identified as appellant, approximately 25 feet from the truck and walking quickly away from the crashed truck. Officer Nelson testified that no businesses were open in the area at that time on a Sunday afternoon. Officer Nelson drove past appellant

and made a U-turn to return to the scene of the crash, continuing to observe appellant in his rearview mirrors and through his driver's-side window. Officer Nelson observed appellant repeatedly look over his shoulder at the squad car, and walk "faster and faster" away from the pickup and toward the Taurus.

Appellant eventually reached the Taurus and got into the front passenger seat. As Officer Nelson was pulling into the parking lot, he saw the Taurus move slightly, as if the car had been placed in "drive." Officer Nelson suspected that appellant was attempting to leave the scene of the crash, testifying: "Based on seeing the person walking away from that area very fast [and] the driver of the car watching me as I drove by, I believed that they may try to take off from the scene." Officer Nelson advised dispatch by radio that somebody was attempting to leave the scene. He then activated his overhead lights and pulled his squad car behind the Taurus.

Officer Nelson exited his squad car and drew his sidearm. He testified that no other people were then in the vicinity. He explained that he uses his sidearm "any time that there [are] any safety issues" and that, as a lone officer stopping two suspects, he had concerns for his own safety. Officer Nelson instructed the driver to turn off the car and throw the keys out of the window. The driver complied. Officer Nelson approached the passenger side of the car where appellant was seated.[1]

Officer Nelson ordered appellant to exit the Taurus, informed him that he was being "detained," and handcuffed and pat-frisked him. The pat-frisk revealed that

[1] The record is not clear as to whether Officer Nelson still had his sidearm drawn as he approached the passenger side of the Taurus.

appellant was unarmed. As Officer Nelson escorted appellant to the squad car, he noticed that appellant smelled of marijuana and was exhibiting clear signs of intoxication. Officer Nelson testified that appellant "smelled like alcohol both emitting from his person and breath. He had bloodshot and watery eyes and he was unstable on his feet. He was also slurring his words while I was speaking to him." Still handcuffed, appellant was placed in the backseat of the squad car while Officer Nelson continued evaluating and investigating the crash scene.

Officer Nelson noticed a red Saturn approaching northbound in an alley connected to the parking lot as he escorted appellant to the squad car. Apparently believing that the red Saturn was the other vehicle that dispatch had informed him may have been involved in the crash, Officer Nelson commanded the driver of that car to stop, and the driver complied.[2]

Another police officer arrived on the scene at some point to assist Officer Nelson. After further investigation, Officer Nelson confirmed that appellant had been the driver of the crashed pickup and placed appellant under arrest for driving while impaired.

Appellant was charged with two counts of first-degree driving while impaired. Minn. Stat. § 169A.20, subd. 1(1), (5). Appellant sought a pretrial dismissal on two grounds: (1) that Officer Nelson did not have a reasonable and articulable suspicion that appellant was engaged in criminal activity to justify a *Terry* stop of the Taurus, and

[2] It was later determined that neither the driver of the Saturn nor the driver of the Taurus had any involvement in the crash. The driver of the Taurus was apparently picking up appellant after having been requested to do so. But the district court credited Officer Nelson's testimony that, when he stopped the Taurus, Officer Nelson reasonably suspected that the Taurus and its occupants had been involved in the crash.

(2) that Officer Nelson's excessive show of force—i.e. by drawing his sidearm and handcuffing appellant—turned the investigative detention into a de facto arrest, unsupported by probable cause. The district court denied the motion on both grounds and, after a stipulated-facts trial pursuant to Minn. R. Crim. P. 26.01, subd. 4, adjudicated appellant guilty of both counts. 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) (quoting *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007)).

Constitutionality of the stop

Appellant argues that, because the circumstances observed by Officer Nelson were not sufficient to give rise to a reasonable and articulable suspicion of criminal activity, Officer Nelson's stop of the Taurus and its occupants was unlawful. He argues that Officer Nelson (1) did not have a description of the driver, (2) had been informed that the driver had left the area, (3) did not see appellant "tending to or exiting the pickup truck," (4) did not observe signs of intoxication prior to the stop, such as stumbling, and (5) did not receive a report of personal injury in relation to the crash. He also argues that there is insufficient evidence that appellant changed his gait upon seeing the squad car, or that the Taurus moved when Officer Nelson pulled his squad car behind it. He contends that "the information relayed to Officer Nelson was nothing more than a property accident on a winter day in Minnesota."

The state counters by arguing that "rather than viewing the situation under the totality of the circumstances . . . [appellant] isolates each aspect of the situation and points out possible innocent explanations for his behavior." Under the totality of the circumstances, the state argues, appellant's evasive conduct made it reasonable for Officer Nelson to conclude that criminal activity may have been afoot, namely that appellant was attempting to flee the scene of a crash, thereby justifying Officer Nelson's actions.

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer may briefly stop and detain an individual for purposes of investigation when the officer has a "reasonable, articulable suspicion" of criminal activity. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). Reasonable and articulable suspicion requires that an officer "observe[] unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). 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) (quotation omitted). "[T]he reasonable suspicion showing is not high." *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quotation omitted). But the police officer's actions must have been taken on more than a hunch or "mere whim, caprice, or idle curiosity." *State v. Johnson*, 444 N.W.2d 824, 827 (Minn. 1989) (quotation omitted).

Although innocent behavior in and of itself does "not generally provide reasonable suspicion, innocent factors in their totality, combined with the investigating officer's experience . . . can be sufficient bases for finding reasonable suspicion." *In re Welfare of M.D.R.*, 693 N.W.2d 444, 449 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. June 28, 2005). "A determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct." *United States v. Arvizu*, 534 U.S. 266, 277, 122 S. Ct. 744, 753 (2002). In the course of a *Terry* stop, an officer is generally authorized to take such steps as are reasonably necessary to protect his 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).

Appellant was "seized" when Officer Nelson activated his overhead lights and siren and pulled his squad car behind the Taurus. *See State v. Bergerson*, 659 N.W.2d 791, 795 (Minn. App. 2003) (stating that activating overhead lights to communicate to driver that he is not free to leave generally constitutes a seizure). The relevant inquiry is whether the totality of the circumstances observed by Officer Nelson prior to that seizure gave rise to a reasonable and articulable suspicion that criminal activity may have been afoot. *See Martinson*, 581 N.W.2d at 850. The district court concluded that it did.

Appellant was the only pedestrian Officer Nelson observed in the area of a significant motor-vehicle crash. The crash was of sufficient severity to have triggered a retail store's burglar alarm. Appellant repeatedly looked over his shoulder at the squad car as Officer Nelson drove past the scene. And appellant walked "faster and faster" away from the scene of the crash. It appeared to Officer Nelson as if the Taurus had been

placed in "drive" after appellant got in, indicating that appellant and the driver may have been attempting to depart. The district court found Officer Nelson's testimony credible. The district court's findings are not clearly erroneous. *See Gauster*, 752 N.W.2d at 502.

Appellant argues that much of what Officer Nelson observed had potentially innocent explanations. But each individual fact cannot be evaluated in a vacuum. *M.D.R.*, 693 N.W.2d at 449 (noting that a combination of seemingly innocent actions may give rise to a reasonable and articulable suspicion of criminal activity). It might well be unremarkable that a pedestrian walks quickly on a cold winter day, but coupled with the fast-paced walk being away from a recent motor-vehicle crash (significant enough to trigger a burglar alarm), and with the pedestrian repeatedly glancing at an approaching police car while accelerating his pace, the officer could reasonably suspect that something more than a cold winter day accounted for what he was seeing. *See id.*

Appellant also argues that, because there was no report of personal injury at the scene of the crash, he was not required by law to remain at the site. *See* Minn. Stat. § 169.09, subds. 1, 2 (2010) (setting forth requirements regarding motor-vehicle accidents). But it is unusual for any person to quickly depart the scene of a serious crash within minutes of its occurrence, regardless of the specific legal obligation of a driver to report a crash to authorities. Based on the combination of appellant's gait, continued glances at the squad car, and apparent attempt to leave the scene of a significant crash, and considering the totality of the circumstances, it was reasonable for Officer Nelson to conclude that criminal activity may have been afoot. *See Bourke*, 718 N.W.2d at 927 (noting that "the reasonable suspicion showing is not high" (quotation omitted)).

Appellant also argues that Officer Nelson receiving information from dispatch that the driver of the pickup had left the area precludes a finding of reasonable suspicion that appellant was the driver of the truck. The district court adequately considered this possibility in its analysis, stating: "While this would weigh against an initial inference that [appellant] had been driving the pickup, it is not entirely inconsistent with that inference (the driver might have returned, or the initial report could have been inaccurate)." We agree. Officer Nelson's receipt of information that the driver of the crashed vehicle may have left the scene did not render unreasonable Officer Nelson's suspicion that appellant was the driver as he saw him walking quickly away from the scene just minutes after the crash.

Based on the totality of the circumstances, and the officer's reasonable need to investigate the crash, we see no error in the district court's conclusion that Officer Nelson was justified in stopping the Taurus. *See Hensley*, 469 U.S. at 235, 105 S. Ct. at 683-84 (stating that preserving the status quo can justify a *Terry* stop). "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow . . . a criminal to escape." *Adams v. Williams*, 407 U.S. 143, 145, 92 S. Ct. 1921, 1923 (1972).

De facto arrest

The district court held that Officer Nelson did not transform the stop into a de facto arrest "when he directed [appellant] to exit the [Taurus], handcuffed him, and placed him in the back of the squad car." Appellant argues that, once Officer Nelson activated his overhead lights and the driver of the Taurus threw his keys out the window,

the scene was "frozen" and Officer Nelson no longer had reason to be concerned for his own safety or that the suspects would flee. At the time appellant was handcuffed, he argues, Officer Nelson did not have probable cause to believe that appellant had committed a crime, making the use of force unreasonable. Therefore, appellant argues, the resulting evidence obtained should have been suppressed as a remedy for the unconstitutional arrest.

An initially valid stop may become invalid if it becomes "intolerable" in its "intensity and scope." *Terry v. Ohio*, 392 U.S. 1, 18, 88 S. Ct. 1868, 1878 (1968).

> 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). The United States Supreme Court has indicated that we may also consider "the severity of the crime at issue . . . and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight." *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872 (1989). "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396-97, 109 S. Ct. at 1872.

The use of handcuffs is generally associated with a formal arrest. *See Dunaway v. New York*, 442 U.S. 200, 215 & n.17, 99 S. Ct. 2248, 2258 & n.17 (1979) (identifying

handcuffing as among the "trappings of a technical formal arrest"); *see also United States v. Glenna*, 878 F.2d 967, 972 (7th Cir. 1989) ("[H]andcuffs are restraints on freedom of movement normally associated with arrest." (emphasis omitted)); *United States v. Newton*, 369 F.3d 659, 676 (2d Cir. 2004) ("Handcuffs are generally recognized as a hallmark of a formal arrest."); *United States v. Maguire*, 359 F.3d 71, 79 (1st Cir. 2004) ("[T]he use of handcuffs . . . [is] one of the most recognizable indicia of traditional arrest." (quotation omitted)). But "briefly 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." *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999). Generally, "such restraint must be temporary, and thus, absent other threatening circumstances, once the pat-down reveals the absence of weapons the handcuffs should be removed." 4 Wayne R. LaFave, *Search and Seizure*, § 9.2(d) at 411 (5th ed. 2012) (quotations omitted).

Officer Nelson's not having removed the handcuffs from appellant after the pat-frisk revealed an absence of weapons is insufficient to transform this investigative stop into a formal arrest given the unusual circumstances present in this case. The use of a sidearm and handcuffs is not justified in most DWI stops. *Cf. State v. Carver*, 577 N.W.2d 245, 251 (Minn. App. 1998) (holding that the use of handcuffs prior to an officer observing any indicia of intoxication in the course of a routine traffic stop transformed the stop into a formal arrest and the evidence of intoxication obtained afterwards must be suppressed). But the unique circumstances here made the stop anything but routine.

Appellant argues that *Carver* requires that we reverse the district court. The district court distinguished *Carver* on several grounds, which the state advances on appeal. The state also argues that we "should not indulge in unrealistic second-guessing" of police conduct. *State v. Moffatt*, 450 N.W.2d 116, 119 (Minn. 1990).

In *Carver*, the suspect was driving 75 miles per hour in a 55 mile-per-hour zone, and the officer followed the suspect for approximately two miles. 577 N.W.2d at 247. The officer noted that the car "leaned quite a bit" as it turned, which indicated that it was driving too fast. *Id.* When the officer activated his siren and pulled over the suspect, the suspect parked his car angled towards the ditch. *Id.* The officer ordered the suspect out of the car and to assume a prone position in the roadway. *Id.* The officer then handcuffed the suspect and escorted him to the squad car. *Id.* The officer noticed a strong odor of alcohol on the suspect's breath, but the record was unclear concerning when the officer noticed the smell. *Id.* Once inside the patrol car, the officer had the suspect submit to a preliminary breath test, which he failed. *Id.* The officer then placed the suspect under arrest. *Id.* *Carver* stands for the proposition that an officer must observe at least one indicia of intoxication prior to making a formal arrest in a routine DWI stop. *Id.* at 248 ("An officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence." (quoting *Heuton v. Comm'r of Pub. Safety*, 541 N.W.2d 361, 363 (Minn. App. 1995)). But given the crash

under investigation and the bizarre circumstances present in this case, *Carver* is distinguishable.[3]

First, in *Carver* there was only a single driver and a single vehicle, *id.* at 247, whereas here Officer Nelson was concerned about three individual suspects and three different vehicles. The possible involvement of multiple people heightened Officer Nelson's safety concerns. When Officer Nelson came upon the scene, he did not know whether and how the three individuals were involved in the crash or the earlier burglar alarm. All were suspects until Officer Nelson could complete his assessment of the chaotic scene.

Second, the driver in *Carver* did not present any flight risk, as he obeyed the officer's command to lay prone in the roadway. *Id.* Officer Nelson, on the other hand, was concerned that the occupants of the Taurus were somehow involved in the crash and attempting to leave the scene. Given appellant's fast-paced walk away from the crash, Officer Nelson was justified in not turning his attention to the other two drivers until he was assured that appellant would not flee. And there were no other officers present on whom Officer Nelson could rely for securing appellant or assessing the involvement of the other vehicles and individuals at the scene of the crash.

[3] We also note that *Carver* was a decision regarding the state's pretrial appeal from the district court's decision to suppress evidence and dismiss the case. *Id.* at 246. When the state brings a pretrial appeal, it must demonstrate "clearly and unequivocally that the [district] court has erred . . . and that the error will have a critical impact on the outcome of the trial." *Id.* at 247 (quoting *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992)). Thus, the standard of review in *Carver* was deferential to the district court's decision.

Third, the initial offense observed in *Carver* was petty misdemeanor speeding. *Id.* at 246. Here, Officer Nelson reasonably suspected several possible criminal offenses, including failure to provide notification of property damage to the owner of property involved in a motor-vehicle accident, Minn. Stat. § 169.09, subd. 14(c) (2010), and driving while impaired, Minn. Stat. § 169A.20, subd. 1 (2010). *Carver* involved only a suspected petty misdemeanor, for which arrest is impermissible. *See State v. Martin*, 253 N.W.2d 404, 406 (Minn.1977) ("[A]n officer ordinarily may not arrest a person without a warrant for a petty misdemeanor."). A police officer may make a custodial arrest for a misdemeanor. *E.g.*, *State v. Jensen*, 351 N.W.2d 29, 31-32 (Minn. App. 1984).

Appellant argues that the situation was "frozen" once the driver of the Taurus threw his keys out of the window and that Officer Nelson's drawing of his sidearm and use of handcuffs were not necessary to preserve the status quo or to protect Officer Nelson's safety. But until Officer Nelson could identify the drivers of the Taurus and the truck, and another officer arrived to assist, the situation was not frozen. And despite the pat-frisk of appellant having revealed no weapons, Officer Nelson did not know whether others at the scene were armed. What he did know was that appellant appeared to have been leaving the scene of a crash. Temporarily detaining appellant until assistance arrived was justified in the circumstances.[4]

[4] The district court also relied on Officer Nelson's having told appellant he was being "detained," and thus having made appellant aware that he was not under arrest, as distinguishing *Carver*. The cases that hold that an officer's words can disabuse a suspect of the notion that he is under arrest involve statements such as "you are not under arrest." *See. e.g.*, *State v. Walsh*, 495 N.W.2d 602, 603-05 (Minn. 1993). After being ordered out of the car and handcuffed, we doubt that appellant or any reasonable citizen would have

Officer Nelson could have removed the handcuffs after the pat-frisk revealed the absence of weapons. *See Munson*, 594 N.W.2d at 132 (allowing the use of handcuffs until the suspects were patted for weapons, at which point the handcuffs were removed). The question is not whether, looking back on the situation from the comfortable confines of the Minnesota Judicial Center, there was a more reasonable approach available to the officer. The correct question, and the one analyzed by the district court, is "whether the [officer] acted unreasonably in failing to recognize or pursue [a different approach]." *Moffatt*, 450 N.W.2d at 119 (quotation omitted). Given the unique circumstances in this case, we decline to second-guess the approach taken by Officer Nelson, which the district court concluded was reasonable under the circumstances. *See id.* (stating that the courts "should not indulge in unrealistic second-guessing" of police conduct).

Affirmed.

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placed much significance on the nuanced difference between the words "detained" and "arrested." That statement does not help to distinguish this case from *Carver*.