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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0753**

Kevin Dale Peterson, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed January 22, 2013  
Affirmed  
Stauber, Judge**

McLeod County District Court  
File No. 43CV111740

Richard L. Swanson, Chaska, Minnesota (for appellant)

Lori Swanson, Attorney General, Sara Pesola Boeshans, Mathew A. Ferche, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and Collins, Judge.\*

**UNPUBLISHED OPINION**

**STAUBER**, Judge

Appellant challenges the district court's decision sustaining the revocation of his driver's license under the implied-consent law, arguing that the officer who seized him

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

lacked the requisite reasonable suspicion of criminal activity to justify the seizure. We affirm.

## **FACTS**

The facts of this case are undisputed. On September 24, 2011, at approximately 11:30 p.m., Sergeant Aaron Ward of the McLeod County Sheriff's Department was on patrol traveling "north-northwest on Highway 22." As he drove past the intersection of Major Avenue and Highway 22, Sergeant Ward observed two vehicles approximately one mile north on Major Avenue. The two vehicles were facing north, had their brake lights on, and appeared to be stationary with one directly in front of the other. Because he found it "odd" that two vehicles would be stationary in the middle of the roadway at that time of night, Sergeant Ward performed a U-turn "to see what was going on."

After Sergeant Ward turned north onto Major Avenue, he was only able to observe one vehicle. As he approached the vehicle, Sergeant Ward observed it backing up onto a field approach. According to Sergeant Ward, he was familiar with the area and knew that the field approach leads to a wooded area where people have been known to "drink or party." Sergeant Ward followed the vehicle off the roadway and onto the field approach and "positioned the squad so [it] was right in front of" the passenger vehicle. Sergeant Ward then shined his spotlight on the vehicle and observed a single occupant in the passenger vehicle. He also noticed that a pickup truck was parked behind the passenger vehicle.

Sergeant Ward exited his squad car and approached the passenger vehicle as the driver of the pickup truck was walking toward him. The driver of the pickup, later

identified as appellant Kevin Dale Peterson, told Sergeant Ward that “he was looking for duck hunting spots.” While speaking with appellant, Sergeant Ward detected indicia of intoxication, and appellant was ultimately arrested and charged with driving while impaired (DWI).

Appellant’s driver’s license was revoked for driving a motor vehicle with an alcohol concentration of 0.08 or more. Appellant subsequently filed a petition for judicial review of the revocation order, arguing that he was unlawfully seized by Sergeant Ward. The district court agreed that appellant was seized, but concluded that the “facts, combined with Sergeant Ward’s training and experience, provided a sufficient factual basis to warrant a brief investigatory stop to determine whether [appellant] was trespassing or engaging in some other form of criminal activity.” Thus, the district court denied appellant’s motion to rescind the revocation of his driver’s license. This appeal followed.

## **D E C I S I O N**

Appellant argues that he is entitled to reinstatement of his driving privileges because the evidence supporting the revocation was obtained during an unlawful seizure. In reviewing a district court’s order sustaining an implied-consent revocation, this court will not set aside conclusions of law unless the district court “erroneously construed and applied the law to the facts of the case.” *Dehn v. Comm’r of Pub. Safety*, 394 N.W.2d 272, 273 (Minn. App. 1986). When there is no factual dispute, “a reviewing court must determine . . . if the officer articulated an adequate basis for the seizure.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

The Fourth Amendment to the United States Constitution and Article I, Section 10, of the Minnesota Constitution protect against unreasonable searches and seizures. A police officer may, however, initiate a limited investigative seizure without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968); *see also State v. Pike*, 551 N.W.2d 919, 921-222 (Minn. 1996) (noting that an investigative stop of a vehicle is lawful if the state can show that the officer had a particularized and objective basis for suspecting criminal activity). Whether the police have reasonable suspicion to conduct an investigatory seizure depends on the totality of the circumstances, and a seizure is not justified if it is “the product of mere whim, caprice, or idle curiosity.” *In re Welfare of M.D.R.*, 693 N.W.2d 444, 448 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. June 28, 2005). The factual basis required to justify an investigative seizure is minimal. *Magnuson v. Comm’r of Pub. Safety*, 703 N.W.2d 557, 560 (Minn. App. 2005). The court may consider the officer’s experience, general knowledge, and observations; background information, including the time and location of the stop; and anything else that is relevant. *Appelgate v. Comm’r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987). Whether a seizure is constitutional is a question of law and is reviewed de novo. *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003).

To be reasonable, the basis for an intrusion must satisfy an objective test: ““would the facts available to the officer at the moment of the seizure . . . warrant a man of reasonable caution in the belief that the action taken was appropriate.”” *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quoting *Terry*, 392 U.S. at 21-22, 88

S. Ct. at 1880 (internal quotation omitted)). In turn, the test for appropriateness balances the government's need for the seizure and the subject's right to "personal security free from arbitrary interference by law officers." *Id.* (citing *United States v. Brigoni-Ponce*, 422 U.S. 873, 878, 95 S. Ct. 2574, 2579 (1975)).

There is no fixed or definitive test for the reasonableness of an investigatory [seizure]. Rather, we must balance the need for the [seizure] against the invasion [it] entails. There can be no rational disagreement that an investigatory [seizure] is necessary when the totality of the circumstances points to some observable "unusual conduct . . . [that leads an officer] reasonably to conclude in light of his experience that criminal activity may be afoot." But the officer must articulate specific facts that, "taken together with rational inferences from those facts," reasonably justify the seizure. The officer need not be absolutely certain of the possibility of criminal activity, but he cannot satisfy the test of reasonableness by relying on an "inchoate and unparticularized suspicion or 'hunch.'"

*State v. Schrupp*, 625 N.W.2d 844, 846-47 (Minn. App. 2001) (citations omitted), *review denied* (Minn. July 24, 2001). The police may seize a person so long as the facts "support at least one inference of the possibility of criminal activity." *Id.* at 847-48.

Appellant argues that the seizure was unreasonable because "[t]here is nothing in the record to establish a reasonable suspicion that criminal activity was afoot or that an independent emergency situation existed." Conversely, the commissioner argues that this issue need not be addressed because "[a]s a threshold issue, no seizure occurred when Sergeant Ward parked his squad car and initially approached and made contact with appellant." We conclude that we need not address the commissioner's contention that no seizure occurred because any such seizure was reasonable.

In *O'Neill v. Comm'r of Pub. Safety*, 361 N.W.2d 471, 473 (Minn. App. 1985), this court concluded that there was sufficient articulable suspicion to warrant an investigatory stop where (1) it was 1:30 in the morning, (2) there had been a party in the vicinity three hours earlier, and (3) the vehicles were on an access road for fishing but were not pulling fishing boats. The facts in *O'Neill* are similar to the facts in this case.

The record reflects that appellant's driving conduct was unusual; Sergeant Ward observed two vehicles that appeared to be stationary with one directly in front of the other in the middle of the roadway at 11:30 at night. The record also reflects that upon further investigation, one of the vehicles was no longer visible, and Sergeant Ward observed the second vehicle back up onto a field approach until it disappeared from view. Sergeant Ward testified that he was familiar with the area and was aware that that field approach leads to a wooded area where people have been known to "drink or party." Sergeant Ward's knowledge and experience that parties are held in that area combined with the unusual driving conduct of the vehicles provided Ward with sufficient reasonable suspicion to warrant an investigatory stop. Because Sergeant Ward had a sufficient basis to conduct an investigatory stop, we conclude that the district court did not err by sustaining the revocation of appellant's driver's license.

**Affirmed.**