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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0773**

State of Minnesota,
Respondent,

vs.

Lynette Marie Dicke,
Appellant.

**Filed February 19, 2013
Affirmed
Stoneburner, Judge**

Wabasha County District Court
File No. 79-CR-11-638

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

James C. Nordstrom, Wabasha County Attorney, Wabasha, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Stoneburner, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges her conviction of a fifth-degree controlled-substance crime,
arguing that the district court erred by denying her motion to suppress evidence of the

controlled substance. Appellant argues that the evidence is the fruit of an illegal seizure. We affirm.

FACTS

The evidence in this case consists of police reports and squad car videotapes, which were submitted to the district court at the omnibus hearing and again at the Minn. R. Crim. P. 26.01, subd. 4, court trial by stipulation of the parties. Lake City police officer Kevin Dather, while on routine patrol, saw two cars drive to the northeast corner of a cemetery and stop. The drivers got out of their vehicles and walked towards each other as Officer Dather entered the cemetery and drove toward them. As he approached, Officer Dather saw a female get into a dark-colored GM vehicle and a male get into a small white vehicle and drive toward the squad car. As the GM passed, Officer Dather recognized appellant Lynette Marie Dicke. He did not recognize the man driving the white car.

Officer Dather exited the cemetery and parked nearby. He then saw that the same cars had moved to the south side of the cemetery and stopped. The drivers got out of their vehicles again, met each other, and appeared to exchange something. They returned to their vehicles and drove toward the street where Officer Dather was parked. Officer Dather followed them south on the street. He advised Officer James Witts, who was in another squad car, about suspicious activity that he had observed and asked Witts to come towards his location and assist in stopping the two cars. Officer Dather then activated his lights and Dicke pulled over as if she was going to stop. Officer Dather continued on and stopped the white vehicle, then observed that Dicke had continued on.

Officer Dather advised Officer Witts of the direction in which Dicke drove, and Officer Witts subsequently advised Officer Dather that he had located Dicke and her vehicle at a residence and that he would be talking with her.

Officer Witts found Dicke standing in the front yard of a residence, which she told him was the residence of a woman for whom Dicke did yard work. Officer Witts asked her to wait in her car for Officer Dather to arrive. Dicke complied, but Officer Witts observed Dicke making furtive movements inside the vehicle, then exit the vehicle and walk towards the front passenger-side corner of the vehicle. Officer Witts approached and observed Dicke standing away from him as if to hide something. As he got closer, he saw what appeared to be Dicke putting something down the front of her shorts.

Officer Witts told Dicke to put her hands behind her back so he could handcuff her. Dicke was uncooperative. As Officer Witts attempted to handcuff her, he heard “the noise of a glass object on the ground” and saw Dicke “attempting to swipe something with her foot towards the underside of the vehicle.” Officer Witts handcuffed Dicke as Officer Dather arrived. Officer Witts looked for the object that had made the sound and found a glass pipe of a type commonly used for smoking methamphetamine under the vehicle near where Dicke had been swiping her foot. Officer Dather then emptied Dicke’s pockets, finding wads of money. As he began walking with Dicke, a small plastic bag fell from her shorts. The bag contained “a rock and residue” which Officer Dather identified, based on his experience, as appearing to be methamphetamine. Dicke’s vehicle was towed and, during a subsequent K-9 search, the dog alerted to the front passenger area where Officer Witts said Dicke was sitting at one time when he was

talking to her. Dicke was charged with a fifth-degree controlled-substance crime and obstructing arrest.

The district court denied Dicke's motion to suppress evidence of the methamphetamine, and found Dicke guilty of both charges after a stipulated-facts court trial under Minn. R. Crim. P. 26.01, subd. 4. Dicke was sentenced, and she now appeals challenging denial of the motion to suppress.

D E C I S I O N

I. Standard of review

“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). “[W]hen the facts are not in dispute, a reviewing court must determine whether a police officer’s actions constitute a seizure and if the officer articulated an adequate basis for the seizure.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

II. Dicke’s seizure

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But “[t]he United States Supreme Court has held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted); *see also Terry v. Ohio*, 392 U.S. 1, 30, 88

S. Ct. 1868, 1884-85 (1968); *State v. Flowers*, 734 N.W.2d 239, 250-51 (Minn. 2007). A police officer must articulate a particularized and objective basis for suspecting the particular person stopped of criminal activity. *Timberlake*, 744 N.W.2d at 393.

Dicke argues that she was seized when Officer Witts blocked her car in the driveway of the home and instructed her to stay in the car until Officer Dather arrived. A person has been “seized” when, based on the totality of the circumstances, “a reasonable person in the defendant’s shoes would have concluded that he or she was not free to leave.” *In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993). If a district court determines that under all the circumstances, a reasonable person would have believed that because of the conduct of the police she was not free to leave, then there was a “seizure,” and the police must be able to articulate reasonable suspicion justifying the seizure, otherwise any evidence that is the fruit of the seizure is suppressible. *Id.* We agree that, under the totality of the circumstances, Dicke was seized when Officer Witts pulled into the driveway behind her car and asked her to sit in her car while they waited for Officer Dather to arrive.

In determining whether a seizure is constitutionally valid, an appellate court considers the totality of the circumstances surrounding the seizure. *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983). An investigatory seizure is valid where the officer has a “particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Id.* (quotation omitted). “When more than one officer is involved in an investigation, Minnesota uses the ‘collective knowledge’ approach to determine whether [sufficient cause] existed.” *State v. Riley*, 568 N.W.2d 518, 523 (Minn. 1997).

The entire knowledge of the police force is pooled and imputed to the arresting officer for the purpose of determining if sufficient cause existed. *Id.*

Under the collective-knowledge doctrine, everything that Officer Dather observed before Officer Witts seized Dicke is imputed to Officer Witts. This includes Officer Dather's observation that the drivers of two vehicles that entered the cemetery together aborted a meeting as his squad car approached them, then, when his squad car was out of their sight, met in another corner of the cemetery and exchanged something before leaving the cemetery in tandem. According to Officer Witts's report, Officer Dather described the activities in the cemetery as "suspicious." Additionally, Officer Witts is deemed to have had all of the knowledge Officer Dather had before Officer Witts located Dicke, which includes Dicke leaving the scene of the attempted traffic stop, and Officer Dather's observation that the driver of the other vehicle was shaking and his pupils appeared to be very constricted. Officer Dather's report demonstrates that, prior to or simultaneous with Officer Witts locating Dicke, Officer Dather learned that the driver of the vehicle he stopped had a warrant out of Goodhue County for failure to appear on a charge of fifth-degree possession of a controlled substance. Under the totality of the circumstances, we conclude that Officer Witts had reasonable articulable suspicion that Dicke had been involved in criminal activity that justified an investigative stop.

Dicke does not dispute that her conduct after the seizure gave rise to sufficient cause for the subsequent actions of Officers Witts and Dather. Because the initial seizure

of Dicke is supported by reasonable articulable suspicion, the district court did not err in denying her motion to suppress.

Affirmed.