STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1717

Scott Steven Thom, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed June 25, 2012
Affirmed
Worke, Judge

Goodhue County District Court
File No. 25-CV-11-1075

Douglas Voigt Hazelton, Halberg Criminal Defense, Bloomington, Minnesota (for appellant)

Lori Swanson, Attorney General, David Strommen Voigt, Assistant Attorney General, Paul R. Kempainen, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

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

WORKE, Judge

Appellant challenges a district court order sustaining the revocation of his driver's license, arguing that a police officer had no reasonable articulable suspicion to seize him

in a restaurant because the officer did not know the identity of the driver of the suspect vehicle and chose appellant by process of elimination. We affirm.

D E C I S I O N

Appellant Scott Steven Thom was arrested for driving while intoxicated (DWI) and challenges the district court's denial of his motion to rescind the implied-consent revocation of his driver's license, arguing that the officer seized him without a reasonable, articulable suspicion that he was engaged in criminal activity. We apply a de novo standard of review to a district court's determination of whether a law enforcement officer seized a person. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

The United States and Minnesota Constitutions guarantee against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. It is not unreasonable for a police officer to conduct a brief investigatory stop of a person if the officer has a reasonable, articulable suspicion that the person might be engaged in criminal activity. *See State v. Houston*, 654 N.W.2d 727, 731 (Minn. App. 2003), *review denied* (Minn. Mar. 26, 2003); *see also Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968).

But "[n]ot all encounters between the police and citizens constitute seizures." *Harris*, 590 N.W.2d at 98. An officer does not necessarily seize a person merely by approaching the person in a public place and asking questions. *In re Welfare of E.D.J.*, 502 N.W.2d 779, 782 (Minn. 1993). A person is seized only when, considering the totality of the circumstances, "a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter."

State v. Cripps, 533 N.W.2d 388, 391 (Minn. 1995). We consider whether "the conduct of the police would communicate to a reasonable person in [appellant's] physical circumstances an attempt . . . to seize or otherwise to significantly intrude on the person's freedom of movement." *State v. Hanson*, 504 N.W.2d 219, 220 (Minn. 1993). In considering the totality of the circumstances, there are specific factors that are more relevant than others in determining whether an officer has seized an individual. *E.D.J.*, 502 N.W.2d at 781.

> Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

Id. (quoting *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877 (1980)). "In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." *Id.* (quoting *Mendenhall*, 446 U.S. at 555, 100 S. Ct. at 1877).

Here, on March 29, 2011, at approximately 2:14 a.m., an officer responded to a report from dispatch that an identified caller reported an SUV being driven across a grassy boulevard and into a restaurant parking lot. Investigating upon suspicion of DWI or criminal damage to property, the officer arrived at the restaurant and observed tire tracks on the grass and two vehicles in the parking lot matching the description of the suspect vehicle.

The officer, in uniform and armed, went inside the restaurant and saw two females and two males sitting at a table. There was also an empty chair at the table with a coat draped over its back. The officer approached the group, intending to question them in determining whether he located the suspect vehicle and, if so, to ascertain its driver. The officer explained that he had received a report of a vehicle being driven across the grass and asked them who had been driving that vehicle. The individuals each denied driving the vehicle. The officer observed a reflection in the window of a man approaching the table. As appellant approached, the officer turned around and decided to intercept appellant because he believed that the group had lied to him and in his experience it is convenient to keep an individual removed from a group from which he has been separated. The officer said "hello" and asked appellant if he had been driving the vehicle. The officer then asked appellant if he "would mind coming and speaking" with him. Appellant followed the officer to the lobby.

Appellant argues that the officer seized him when the officer intercepted him on his return to the table and redirected him to the lobby. But this was merely an encounter. *See id.* at 782 (stating that it is not necessarily a seizure when an officer merely approaches a person in a public place and asks questions). The officer was alone, he did not display his weapon, he did not touch appellant, and he did not use language or a tone of voice that compelled appellant to comply with his request to follow him to the lobby. *See id.* at 781. Appellant emphasizes the officer's use of the word "intercept" to show a display of authority. However, the officer explained that the word "intercept" is a commonly used police-officer term. As used in context, the officer's overall conduct did

not communicate to appellant that he was seized or that his freedom of movement was curtailed. *See Hanson*, 504 N.W.2d at 220. Thus, the district court properly sustained the revocation of appellant's driver's license.

Affirmed.