STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0108

State of Minnesota,
Respondent,

vs.

Bart Thomas Skalsky,
Appellant.

Filed January 14, 2013
Affirmed
Larkin, Judge

Clay County District Court
File No. 14-CR-10-4536

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

Brian J. Melton, Clay County Attorney, Lori H. Conroy, Gregg Jensen, Assistant County Attorneys, Moorhead, Minnesota (for respondent)

Larry G. Rapoport, Minnetonka, Minnesota; and

Scott J. Strouts, Minneapolis, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and Larkin, Judge.

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

LARKIN, Judge

In this appeal from convictions of driving while impaired (DWI) and carrying a pistol while under the influence of alcohol, appellant argues that the district court erred by denying his motion to suppress evidence that was obtained after a police officer opened the door to his parked vehicle. Because any seizure that may have resulted from the officer's conduct was justified under the emergency exception to the warrant requirement, we affirm.

FACTS

On December 6, 2010, Glyndon Police Officer Zachary Eifert arrested appellant Bart Thomas Skalsky for driving while impaired. Respondent State of Minnesota subsequently charged Skalsky with second-degree DWI, third-degree DWI, and carrying a pistol while under the influence of alcohol. Skalsky moved the district court to suppress the evidence against him, arguing that it was obtained as a result of an unconstitutional seizure.

The district court held an evidentiary hearing on the motion. Eifert was the sole witness. He testified that while on routine patrol at approximately 11:30 p.m., he noticed a white Trailblazer parked in a commercial private parking lot with its engine running. He drove into the parking lot intending to "ask the motorist to move along." Eifert pulled up to the side of the Trailblazer with his headlights shining on the driver's side window. He did not activate his emergency lights.

Eifert testified that he approached the Trailblazer on foot. He observed an individual, later identified as Skalsky, reclined in the driver's seat. Skalsky appeared to be asleep. Eifert knocked on the Trailblazer's window and doorframe. Eifert testified that after he knocked on the doorframe, Skalsky's "eyes opened a little bit and they kind of fluttered" and that he could see the whites of Skalsky's eyes. It appeared to Eifert that Skalsky's eyes had "roll[ed] back in his head." Skalsky's eyes closed again, and Eifert opened the unlocked driver-side door because he was "concerned about a possible medical issue." Eifert testified that after he opened the door, he noticed a strong smell of alcohol. He further testified that when Skalsky began to talk, his speech was slurred.

The district court concluded that Eifert did not seize Skalsky because Skalsky's car was "already stopped" in the parking lot, Eifert "didn't block [Skalsky] in," and he "didn't turn on his lights and sirens." The district court further found that Eifert "simply got out of his car and knocked on the window to see if Mr. Skalsky was okay and when [Skalsky] didn't sit up, didn't wake up . . . he opened the door to make sure he's okay." The district court concluded that Eifert conducted a proper welfare check and therefore denied Skalsky's motion to suppress.

Skalsky waived his right to a jury trial and agreed to a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 4.[1] The district court found Skalsky guilty of all three

[1] A "*Lothenbach* proceeding" is a proceeding in which a defendant submits to a court trial on stipulated facts without waiving the right to appeal pretrial issues. *See State v. Lothenbach*, 296 N.W.2d 854, 857-58 (Minn. 1980) (approving this procedure). "Minn. R. Crim. P. 26.01, subd. 4, effective April 1, 2007, implements and supersedes the procedure authorized by [*Lothenbach*]." *State v. Antrim*, 764 N.W.2d 67, 69 (Minn. App. 2009).

offenses and sentenced Skalsky on the second-degree DWI conviction. Skalsky appeals, challenging the district court's denial of his motion to suppress.

D E C I S I O N

"When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

"Both the Minnesota and U.S. Constitutions protect individuals from unreasonable searches and seizures." *State v. Lopez*, 698 N.W.2d 18, 21 (Minn. App. 2005). A warrantless seizure is justified "if an officer has a particular and objective basis for suspecting the particular person seized of criminal activity." *Id.* at 22-23 (quotation omitted). A warrantless seizure may also be justified in emergency situations. *Id.* at 23. "[T]his court [has] adopted a two-part test for use of the emergency exception: (1) is the officer motivated by the need to render aid or assistance; and (2) under the circumstances, would a reasonable person believe that an emergency existed." *Id*. "Generally an officer responding to a call to investigate someone unconscious or sleeping in a vehicle is justified in investigating the welfare of that individual." *Id.*

Skalsky claims that a seizure occurred when Eifert opened the door to his vehicle, and he argues that the seizure was not justified under the emergency exception to the warrant requirement. The state counters that Eifert's conduct did not result in a seizure. The state further contends that even if Skalsky was seized, the seizure was a reasonable welfare check and therefore constitutionally permissible.

Normally, this court would first determine whether Eifert seized Skalsky, and if so, whether the seizure was constitutional. *See id.* at 21-22 (explaining the two-step analytical approach). But in this case, we need not determine whether Eifert seized Skalsky by opening the door to Skalsky's vehicle because even if Eifert's actions constituted a seizure, the seizure was justified under the emergency exception to the warrant requirement.

Our conclusion is influenced by this court's decision in *Lopez*. In *Lopez*, a Kohl's Department Store employee called the police after several customers reported that a person was unconscious in a car in the parking lot. *Id.* at 20. An officer responded and observed Lopez sitting in the driver's seat of a vehicle, apparently unconscious. *Id.* at 21. The officer had to pound on the vehicle's window five or six times to arouse Lopez. *Id.* After she awoke, Lopez was disoriented and struggled to comply with the officer's instruction that she unlock and open the door. *Id.* Once the door was unlocked, the officer opened it and smelled alcohol. *Id.* Lopez was arrested, charged, and convicted of DWI. *Id.*

On appeal, this court held that Lopez was seized and that the seizure was constitutional under the emergency exception to the warrant requirement. *Id.* at 22-24. This court reasoned that "[a] law enforcement officer who receives a citizen report of an unconscious occupant in a vehicle has a reasonable basis for conducting a limited emergency check on the welfare of the occupant." *Id.* at 20.

Similar to the officer in *Lopez*, Eifert observed Skalsky sleeping in the driver's seat of a parked vehicle. When Eifert knocked on the vehicle's window and doorframe to

get Skalsky's attention, Skalsky did not respond. Concerned about a potential medical issue, Eifert opened the door to make sure Skalsky was okay. Under these circumstances, Eifert's concern regarding a possible medical issue was objectively reasonable. *See State v. Lemieux*, 726 N.W.2d 783, 788 (Minn. 2007) ("In applying the emergency-aid exception to the warrant requirement, two principles must be kept in mind: first, that the burden is on the state to demonstrate that police conduct was justified under the exception; and second, that an objective standard should be applied to determine the reasonableness of the officer's belief that there was an emergency."). Thus, Eifert had a reasonable basis for conducting a limited welfare check.

Skalsky offers several arguments regarding why the seizure was not justified under the emergency exception to the warrant requirement. None is persuasive. Skalsky first argues that this case is distinguishable from *Lopez* because Eifert "was simply on routine patrol," "observed a car parked in a private parking lot," and approached Skalsky to "move [him] along." Skalsky further argues that because Eifert was not responding to a citizen's report of an unconscious person in a vehicle, he lacked the requisite subjective intent required under the emergency exception. *See Lopez*, 698 N.W.2d at 23 (stating that the first part of the two-part test under the emergency exception asks: "is the officer motivated by the need to render aid or assistance"). We disagree. An officer's duty to investigate the welfare of a nonresponsive motorist does not depend on whether the officer was directed to the motorist or discovered the motorist's condition on his own. *See Kozak v. Comm'r of Pub. Safety*, 359 N.W.2d 625, 628 (Minn. App. 1984) (stating that "an officer has not only the right but a duty to make a reasonable investigation of

vehicles parked along roadways to offer such assistance as might be needed and to inquire into the physical condition of persons in vehicles").

Moreover, Eifert's intent when he first decided to approach Skalsky's vehicle (i.e., "to ask the motorist to move along"), is not determinative because the initial approach did not constitute a seizure. *See Harris*, 590 N.W.2d at 98 ("A person generally is not seized merely because a police officer approaches him in a public place or in a parked car and begins to ask questions."). Thus, the state need not justify the initial approach. As to Eifert's intent, the relevant point of inquiry is the point at which the purported seizure occurred—when Eifert opened the door to Skalsky's vehicle. At this point in time, Eifert had observed Skalsky sleeping in the driver's seat of a running automobile, which was parked in a commercial lot. And Skalsky did not respond when Eifert knocked on the vehicle's window and doorframe. Eifert testified that he opened the door because he was "concerned about a possible medical issue." This testimony supports the district court's finding that Eifert "opened the door to make sure [Skalsky was] okay." In sum, regardless of Eifert's intent when he initially decided to approach Skalsky's vehicle, the record establishes that when Eifert opened the door to Skalsky's vehicle, he was motivated by the need to render assistance.

Skalsky also argues that it was not reasonable for Eifert to open the door under the circumstances because "Eifert testified that he knocked only one time on the window and doorframe prior to opening the driver's door despite the fact that the driver had just been awakened and had not yet been asked any questions or given [any] time to otherwise verbally respond." Therefore, Skalsky argues, "Eifert had absolutely no objective

information in his possession which indicated that [Skalsky] was in distress, exposed to imminent injury or was in need of emergency assistance," and that "[n]o reasonable person would have objectively concluded that [Skalsky] was in need of aid or faced imminent injury." *See Lemieux*, 726 N.W.2d at 788 (stating that "an objective standard should be applied to determine the reasonableness of the officer's belief that there was an emergency"). We disagree. Skalsky's vehicle was parked in a commercial parking lot at 11:30 p.m. with its engine running. When Eifert knocked on the window and doorframe to get Skalsky's attention, Skalsky did not respond. Rather, Skalsky's eyes opened a bit, fluttered, rolled back in his head, and closed again. We have no difficulty concluding that a reasonable person in Eifert's position would have believed that an emergency existed.

Skalsky also cites this court's acknowledgement in *Lopez* that we may have decided the case differently if "the occupant of the car had awakened and without opening the window or door clearly indicated he was not at risk." 698 N.W.2d at 24 n.1. However, contrary to Skalsky's assertion, Eifert did not testify that Skalsky responded to Eifert's knocking on the window and doorframe. Eifert testified that Skalsky's "eyes opened a little bit and they kind of fluttered," and that it appeared that Skalsky's eyes had "roll[ed] back in his head." Moreover, Eifert specifically testified that Skalsky's eyes were "closed" when he opened the door. The district court considered the testimony and found that Skalsky did not wake up in response to Eifert's knocking. Under these circumstances, it was reasonable for Eifert to open the door to check on Skalsky's welfare. *See id*. at 23 ("As part of [a welfare] investigation the officer must be permitted

to make contact with the individual and ensure that the individual does not require additional medical assistance.").

Finally, Skalsky argues, in effect, that Eifert opened the door prematurely because "[h]e did not ask any questions of, or issue any instructions to, [Skalsky] prior to opening the door." Again, however, the district court found that Skalsky did not wake up in response to Eifert's knocking. Under these circumstances, Eifert was under no obligation to engage in a futile soliloquy. *See Overvig v. Comm'r of Pub. Safety*, 730 N.W.2d 789, 792-93 (Minn. App. 2007) (stating that "it is not reasonable . . . to require officers to communicate with unresponsive or unconscious drivers through closed car windows when the driver refuses or is unable to lower the window"), *review denied* (Minn. Aug. 7, 2007).

In conclusion, any warrantless seizure that resulted from Eifert's act of opening the door to Skalsky's vehicle was constitutionally justified under the emergency exception to the warrant requirement.

Affirmed.