STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1083

Craig Lester Sundquist, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed March 4, 2013
Affirmed
Klaphake, Judge[*]

Clearwater County District Court
File No. 15-CV-11-703

Rich Kenly, Kenly Law Office, Backus, Minnesota (for appellant)

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

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and Klaphake, Judge.

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

KLAPHAKE, Judge

Appellant Craig Lester Sundquist challenges the district court's order sustaining respondent Commissioner of Public Safety's revocation of his driver's license under the

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Implied Consent Law, arguing that law enforcement personnel had no basis to stop and seize him. Because we conclude that law enforcement formed a reasonable, articulable suspicion of criminal activity prior to seizing appellant, we affirm.

D E C I S I O N

Whether an alleged stop was valid is "purely a legal determination on given facts." *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985). We review questions of law de novo. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010).

On a Friday night at approximately 10:30 p.m., a Clearwater Sheriff's Department deputy on routine patrol observed a vehicle traveling too quickly to navigate a curve in the road; rather than successfully navigating the curve, the vehicle veered off the road into an abandoned parking lot. The driver, later identified as appellant, was the sole occupant of the vehicle. The deputy followed the vehicle through a series of turns but eventually lost sight of it. When the vehicle again drove past the deputy, the deputy followed the vehicle onto a gravel road and observed the vehicle turn into a driveway. The deputy knew that the property owner was away from home.

After confirming the name of the property owner with dispatch, the deputy eventually drove into the driveway; he did not activate his emergency lights or siren. Appellant was standing outside of his parked vehicle talking on his cell phone. The deputy parked his patrol car next to, but not blocking, appellant's vehicle. The deputy exited his patrol car and asked appellant what he was doing on the private property and whether he had permission to be there. Appellant continued to take calls on his cell

phone. During this conversation, the deputy smelled an odor of alcohol coming from appellant and noticed appellant staggering when he walked. Based on these observations, the deputy asked appellant to perform field sobriety tests and take a preliminary breath test.

The United States and Minnesota constitutions prohibit the warrantless seizure of an individual, subject to limited exceptions. U.S. Const. amend. IV; Minn. Const. art. I, § 10. An officer may make a limited investigative seizure of an individual if the officer has "a reasonable, articulable suspicion that a suspect might be engaged in criminal activity." *State v. Flowers*, 734 N.W.2d 239, 250 (Minn. 2007) (quotation omitted). But not every interaction between law enforcement and a citizen constitutes a seizure. *State v. Cripps*, 533 N.W.2d 388, 390 (Minn. 1995). Generally, a person is not seized merely because a police officer approaches him and begins to ask questions. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999); *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980). Rather, "a person has been seized if in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter." *Harris*, 590 N.W.2d at 98 (quotation omitted). Some circumstances that may indicate a seizure has occurred include "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.* (quotations omitted).

Appellant argues that he was seized when the deputy drove into the driveway, parked and exited his patrol car, and questioned appellant. We disagree. The deputy did not conduct a traffic stop of appellant's vehicle simply by pulling into the driveway, and the deputy's mere questioning of appellant did not constitute a seizure. Appellant had already stopped and exited his vehicle when the deputy approached. Furthermore, appellant continued taking phone calls throughout the initial conversation, which supports the conclusion that a reasonable person in those circumstances would believe he was free to go, could disregard the deputy's questions, or could terminate the encounter. Without more, the deputy driving his patrol car into the driveway and conversing with appellant did not constitute a stop or a seizure of appellant or his vehicle.

We conclude that appellant was seized when the deputy requested that he perform field sobriety tests and submit to a preliminary breath test. The record reflects that this occurred after the initial conversation, during which the deputy observed the odor of alcohol coming from appellant and appellant staggering as he walked. These observations, combined with appellant's driving conduct of failing to navigate a curve in the road and stopping at night in a driveway not owned by him, constituted a reasonable, articulable suspicion that appellant was engaged in criminal activity.

Because law enforcement seized appellant after forming a reasonable, articulable suspicion that appellant was engaged in criminal activity, the seizure was lawful, and we affirm.

Affirmed.