STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0580

Logan Keith Marxhausen, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed December 30, 2013
Affirmed
Hooten, Judge

Stearns County District Court
File No. 73-CV-12-10171

Rodd Tschida, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Jacob Fischmann, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Hooten, Judge.

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

HOOTEN, Judge

Appellant challenges the district court's order sustaining the revocation of his driver's license under the implied-consent law, arguing that the revocation stems from an illegal traffic stop. We agree with appellant that a seizure occurred when his car was blocked by a squad car with the emergency lights activated, but because the seizure was

supported by the officer's reasonable suspicion that appellant had violated traffic laws, we affirm.

FACTS

On October 1, 2012, around 2:44 a.m., appellant Logan Keith Marxhausen was driving eastbound on University Drive South in Saint Cloud. At this time, Minnesota State Patrol Trooper John Fritz turned onto the same roadway and traveled behind appellant's vehicle. There were no other drivers on the road at this time. University Drive is a four-lane road, with two lanes for eastbound traffic, and two lanes for westbound traffic. Trooper Fritz testified that this area is mostly residential.

Trooper Fritz observed appellant driving in the eastbound, inside traffic lane, with an empty lane between appellant's car and the curb. He then observed appellant braking, not coming to a complete stop, and then continuing down University Drive. Trooper Fritz testified that he saw no obstructions that would have explained why appellant braked. Trooper Fritz observed appellant braking again before coming to a complete stop in the middle of the roadway. At this point, a pedestrian walked up to appellant's car and sat in the front passenger seat.[1] Trooper Fritz testified that he did not see the pedestrian carrying anything. After picking up the pedestrian, appellant's car continued down University Drive.

Trooper Fritz continued following appellant's car while appellant turned left off of University Drive and headed north, possibly onto Twelve Avenue; turned right onto

[1] Trooper Fritz did not recall whether the pedestrian approached appellant's car from across the westbound traffic lanes or from across the eastbound traffic lane between appellant and the curb.

Seventh or Eighth Street heading east; turned left onto East Lake Boulevard heading north; and finally turned right onto Fifth Street heading east. Trooper Fritz testified that appellant used turn signals for all of the turns and that he did not observe any erratic driving behaviors. Trooper Fritz observed appellant's right rear tire bump over the curb as appellant made his final turn. Immediately after the turn, appellant parked behind another car. Trooper Fritz parked behind appellant's car, activated his overhead flashing red emergency lights, and walked up to appellant's car.

Based on Trooper Fritz's further interaction with appellant, appellant was arrested for driving while impaired and respondent Commissioner of Public Safety revoked his driver's license under the implied-consent law. On judicial review, the district court sustained the revocation, finding that Trooper Fritz did not seize appellant when he approached the already parked car, and that even if he did, the stop was supported by reasonable suspicion when he observed appellant impeding traffic by stopping in the middle of the roadway, a violation of Minn. Stat. § 169.15 (2012). This appeal follows.

D E C I S I O N

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. If a police officer seizes an individual without a reasonable, articulable suspicion of criminal activity, then any evidence obtained during the seizure must be suppressed. *State v. Harris*, 590 N.W.2d 90, 97 (Minn. 1999). "This court has determined, and the supreme court has affirmed, that in implied consent proceedings the exclusionary rule applies to evidence obtained from an unconstitutional checkpoint." *Ascher v. Comm'r of*

Pub. Safety, 527 N.W.2d 122, 125 (Minn. App. 1995), *review denied* (Minn. Mar. 21, 1995). This court "review[s] a district court's determination regarding the legality of an investigatory traffic stop and questions of reasonable suspicion de novo." *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 242–43 (Minn. App. 2010).

I.

A person has been seized if, "under all the circumstances, a reasonable person would have believed that because of the conduct of the police he was not free to leave." *In re E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993). In a situation involving an already stopped vehicle, as here, several considerations are relevant for determining whether a seizure occurred. One consideration is the manner in which the police officer approaches the individual. As we stated in *Klotz v. Comm'r of Pub. Safety*:

> It is not a seizure for an officer simply to approach and talk to a person standing in a public place or to a driver seated in an already stopped car. If, however, a suspect is ordered out of a vehicle or the police engage in some other action which one would not expect between two private citizens, such as boxing a car in, it is likely that the event will be considered a fourth amendment seizure.

437 N.W.2d 663, 665 (Minn. App. 1989) (citations omitted). "[T]he use of a squad car to block a parked vehicle generally constitutes a seizure." *State v. Lopez*, 698 N.W.2d 18, 22 (Minn. App. 2005).

Other considerations are the police officer's use of the squad car's overhead emergency lights and the location of the suspect's vehicle. In *State v. Hanson*, the Minnesota Supreme Court held that a seizure did not occur when the police officer observed a vehicle stopped on the shoulder of a remote highway at night, activated his

overhead emergency lights, and then pulled behind the stopped vehicle. 504 N.W.2d 219, 220 (Minn. 1993). On the other hand, we have held that a seizure did occur based on a police officer's conduct of "boxing in [the suspect's] car, then activating his squad's flashing red lights and honking his horn." *State v. Sanger*, 420 N.W.2d 241, 243 (Minn. App. 1988).

Here, the district court found that Trooper Fritz's approach of appellant's already stopped vehicle was not a seizure. We disagree.

We first note that the district court's analysis ignored the fact that Trooper Fritz parked his squad car behind appellant's vehicle, which, along with the vehicle already parked in front of appellant, effectively boxed in appellant's vehicle. Trooper Fritz did not merely approach and talk to appellant but instead displayed a show of authority that limited appellant's movement, communicating to appellant that he was not free to leave.

Moreover, Trooper Fritz's activation of his emergency lights was also a show of authority that would communicate to a reasonable person that an investigatory stop was underway. As this court noted about emergency lights in the context of stopping a moving vehicle:

> A driver confronted with a trailing squad car with flashing red lights inevitably feels duty bound to submit to this show of authority by pulling over until the officer makes it clear that either the driver is not the target of interest or the driver's encounter with the police has come to a conclusion. After ascertaining that a squad car's flashing lights are intended to communicate with him or her, no reasonable driver would believe that he or she is free to disregard or terminate the encounter with police.

State v. Bergerson, 659 N.W.2d 791, 795 (Minn. App. 2003). We conclude that a driver situated in a parked vehicle, such as appellant, would feel equally duty-bound to submit to an officer's show of authority manifested by the activation of the emergency lights.

Respondent argues that under *Hanson*, when a vehicle is already stopped, "activating emergency lights on a squad car does not necessarily constitute a seizure if the purpose is to offer assistance [or] to alert other traffic." But respondent misunderstands *Hanson* and strays from the reasonable-person standard established in *E.D.J.*, 502 N.W.2d at 783. In *Hanson*, the defendant's car was already parked on the shoulder of a highway, at night and far from any town. 504 N.W.2d at 220. This particular circumstance led the supreme court to conclude that:

> A reasonable person would have assumed that the officer was not doing anything other than checking to see what was going on and to offer help if needed. A reasonable person in such a situation would not be surprised at the use of the flashing lights. . . . A reasonable person would know that while flashing lights may be used as a show of authority, they also serve other purposes, including warning oncoming motorists in such a situation to be careful.

Id. Accordingly, the crux of the issue in *Hanson* remained "whether a reasonable person in the defendant's shoes would have concluded that he or she was not free to leave," *E.D.J.*, 502 N.W.2d at 783. A police officer's subjective purpose for activating the emergency lights is irrelevant.[2]

[2] We note that appellant's argument also strays from the reasonable-person standard. Appellant argues that Trooper Fritz testified that he "initiated a stop" and "activated his overhead lights, not to see what was going on, but to expressly communicate to [appellant] and his passenger that they needed to yield to law enforcement." But the police officer's subjective intent in stopping the vehicle is irrelevant under *E.D.J.*

Unlike *Hanson*, appellant was not parked alone on a remote highway. Rather, appellant parked in a residential area by the curb where at least one other car was parked. In such circumstance, a reasonable person would not believe that Trooper Fritz activated his emergency lights to simply warn oncoming motorists. While holding that a seizure did not occur, the *Hanson* court cautioned that "[it] may be that in many fact situations the officer's use of the flashing lights likely would signal to a reasonable person that the officer is attempting to seize the person for investigative purposes." 504 N.W.2d at 220. We find this to be one of those situations.

Respondent also argues that courts have found no seizure to have occurred when a police officer merely approaches a parked vehicle and illuminates the inside of it. But these cases are inapposite because (1) they did not involve the defendants' vehicles being boxed in by the officer, and (2) they all involved an officer who used a spotlight or flashlight—not the overhead flashing red emergency lights—to investigate the defendant's vehicle. *See State v. Vohnoutka*, 292 N.W.2d 756 (Minn. 1980); *Crawford v. Comm'r of Pub. Safety*, 441 N.W.2d 837 (Minn. App. 1989). Compared to a spotlight or flashlight, the use of the overhead flashing red emergency lights is a much stronger show of authority that would communicate to a reasonable person that he or she was not free to leave.

Because the totality of the circumstances establishes that a reasonable person in appellant's circumstance would not have felt free to leave when Trooper Fritz boxed in appellant's parked car in a residential area and activated his emergency lights, we conclude that a seizure occurred.

II.

Appellant next contends that the district court erred in finding that any seizure was constitutional. "A limited investigatory stop of a motorist is constitutionally permissible if the state can show that the officer had a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Wilkes*, 777 N.W.2d at 243 (quotation omitted). "Generally, if an officer observes a violation of a traffic law, no matter how insignificant the traffic law, that observation forms the requisite particularized and objective basis for conducting a traffic stop." *Id.* The factual basis required for a routine traffic stop is minimal, and an actual traffic violation need not occur. *State v. Haataja*, 611 N.W.2d 353, 354 (Minn. App. 2000), *review denied* (Minn. July 25, 2000).

The district court concluded that appellant's violation of Minn. Stat. § 169.15 (2012), which regulates driving conduct that impedes traffic, formed the constitutional basis for seizing appellant. Respondent argues that appellant also violated other traffic laws, Minn. Stat. §§ 169.18 to .19 (2012), by striking the curb while making his final turn onto Fifth Street.[3] We conclude that appellant violated all of these traffic laws, constituting reasonable suspicion for his traffic stop.

[3] Appellant argues that respondent has waived this argument because it has been raised for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But our review of the transcript indicates that respondent preserved this issue when respondent's counsel stated during closing argument, "Then finally he sees the vehicle actually strike the curb in . . . negotiating a turn. Certainly what a reasonable officer could infer could be their impairment from alcohol and driving. If not, perhaps even a lane usage violation."

A. Impeding traffic

Section 169.15, subdivision 1, provides:

> No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law or except when the vehicle is temporarily unable to maintain a greater speed due to a combination of the weight of the vehicle and the grade of the highway.

Appellant presents four independent arguments that he did not violate this traffic law. We disagree and address each in turn.

1. The district court did not ignore an essential component of the statute.

Appellant first argues that the district court applied only a "part of a traffic law" and ignored the component of section 169.15 that prohibits driving at a slow speed "as to impede or block the normal and reasonable movement of traffic." He takes issue with the district court's citing of our decision in *Wilkes* for the proposition that "a violation may occur 'regardless of whether it appears that other traffic will be affected,'" 777 N.W.2d at 243 (quoting *State v. Bissonette*, 445 N.W.2d 843, 845–46 (Minn. App. 1989)). Appellant seems to interpret the district court's quotation as ignoring the impediment of traffic as a component of section 169.15. But the district court clearly did not ignore this component when it reasoned that, despite the absence of other drivers on the roadway, Trooper Fritz observed appellant "slowing down and ultimately stopping within a lane of traffic so as to impede or block the normal and reasonable movement of traffic."[4] The district court thus concluded that the potential impediment of traffic is enough for a

[4] Appellant does not challenge this factual finding on appeal.

violation of section 169.15. Although appellant may disagree with this statutory interpretation, the district court did not ignore a part of the statute.

2. Actual impediment of traffic is not necessary for a violation.

Appellant's next disagreement with the district court's interpretation of section 169.15 is about whether a violation of the statute requires the actual or potential impediment of traffic. He argues that the plain language of the statute "*only* prohibits driving conduct that in fact" impedes traffic. However, in *Wilkes*, we were confronted with this exact argument, and we were not persuaded. We stated, "The purpose of traffic regulation is to protect against traffic hazards, and a violation [of section 169.15] may occur regardless of whether it appears that other traffic will be affected." 777 N.W.2d at 243 (alteration and quotation omitted).

Appellant attempts to recast our holding as dictum by arguing that, in *Wilkes*, we found the actual impediment of traffic to exist when the officer had to alter his speed, *see id.*, and that the statute violated in *Bissonette* "require[d] the use of a turn signal when changing lanes regardless of whether it appears that other traffic will be affected," *see* 445 N.W.2d at 846.

But appellant's disagreement with our application of *Bissonette* in *Wilkes* to analyze section 169.15 does not make our holding any less precedential. And the fact that there was evidence of actual traffic in *Wilkes* only bolstered our conclusion that section 169.15 was violated. This fact did not transform our holding into dictum when we squarely addressed the argument "that [the suspect's] vehicle was only 'briefly halted' and that he was not impeding the flow of traffic because there was an open lane to the left

and no cars were piled up behind him." *Wilkes*, 777 N.W.2d at 243. This argument presented in *Wilkes* is exactly appellant's argument before us now. *Wilkes* stands firmly for the proposition that the actual impediment of traffic is not required for a driver to violate section 169.15.

Appellant argues that requiring only the potential impediment of traffic for a violation of section 169.15 would "lead to absurd results because nobody could ever *slow down* anywhere" and would "support[] police detention of everyone who reduces their speed." But under our interpretation of section 169.15, there still needs to be a factual finding that a defendant was driving at a speed that would impede the normal and reasonable movement of traffic. What's normal and reasonable depends on the factual circumstances. By rejecting appellant's arguments that there must be an actual impediment of traffic for a violation of section 169.15, we have not given police officers the license to stop anyone who slows down.

3. Speed compliance is irrelevant.

Appellant also argues that *Wilkes* is distinguishable from the perspective of speed compliance. He argues that the officer in *Wilkes* had no reason to believe that speed compliance was impossible, whereas here, Trooper Fritz saw appellant pick up a pedestrian and therefore knew that "speed compliance with [section] 169.15 was impossible."

But appellant misunderstands the speed compliance exception. In *Satter v. Turner*, the Minnesota Supreme Court held that section 169.15 "should have no application until a vehicle which is lawfully entering a through highway has had such

reasonable time and opportunity as is essential for such vehicle to acquire the speed of other vehicles on the highway." 251 Minn. 1, 10, 86 N.W.2d 85, 92 (1957). No such circumstance exists here—appellant's *choice* to stop in the middle of the roadway to pick up a pedestrian does not make speed compliance *impossible* for the purposes of applying the speed compliance exception to section 169.15.

4. A driver is not allowed to pick up a pedestrian in any location.

Finally, appellant argues that interpreting section 169.15 with Minnesota Statutes sections 169.011 and 169.34 (2012), yields the conclusion that a driver could pick up a pedestrian anywhere so long as traffic is not impeded. Section 169.15 prohibits driving at a slow speed as to impede traffic, but it also provides an exception for "when reduced speed is . . . in compliance with law." Section 169.34, subdivision 1(a), states, "No person shall stop, stand, or park a vehicle . . . in any of the [enumerated 14] places." Section 169.011, subdivision 78, defines "standing" as "the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers."

Appellant appears to argue that, based on these statutes, his act of "standing" (i.e., picking up a pedestrian) in the middle of the roadway was in compliance with section 169.34 because this statute does not enumerate the middle of the roadway as one of the 14 prohibited parking areas. And therefore, this compliance with section 169.34 triggered the "in compliance with law" exception for reduced speed in section 169.15. Appellant also argues that section 169.011, subdivision 78, "permits temporarily halting a

vehicle to receive a passenger." We find this statutory interpretation to be flawed on numerous levels.

First, section 169.011 is only a definitions section. It defines terms for interpreting other traffic laws that regulate driving conduct, but it does not permit any driving conduct as appellant suggests. And even if it does, subdivision 78 of this section defines "standing" only as "the halting of a vehicle . . . *otherwise* than temporarily." (Emphasis added.) So appellant's self-described conduct of "temporarily halting a vehicle" would seem to fall outside the definition of "standing."

Second, and importantly, appellant mischaracterizes the "in compliance with law" exception of section 169.15. Appellant characterizes the exception as one that allows driving at a reduced speed "so long as he was not impeding other traffic." But the plain language of section 169.15 provides an "in compliance with law" exception *even when* traffic would be impeded.

Third, contrary to appellant's assertion, his compliance with section 169.34 does not trigger the exception for reduced speed in section 169.15. Under the plain language of the statute, any driving conduct that falls under the exception in section 169.15, subdivision 1, must be "in compliance with [a] law" that *grants* the right to drive at a reduced speed even if traffic would be impeded. Section 169.34 does not grant this right because it only *prohibits* certain areas for stopping, standing, and parking. One statute that grants such a right, for example, is section 169.14, subdivision 3(a), which provides:

> The driver of any vehicle shall, consistent with the requirements, *drive at an appropriate reduced speed* when approaching or passing an authorized emergency vehicle

> stopped with emergency lights flashing on any street or highway, when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(Emphasis added.) In these situations, it would be lawful for a driver to reduce speed even if doing so would impede the normal flow of traffic, and this driving conduct would fall under the "in compliance with law" exception of section 169.15.

Finally, appellant appears to argue that because section 169.34 provides an exhaustive list of 14 prohibited areas for receiving passengers, a driver can therefore receive passengers anywhere else, including the middle of the roadway where appellant picked up a pedestrian. This argument is logically flawed. As discussed, the plain language of section 169.15 provides an exception to reduce speed even when traffic would be impeded. And if, as appellant asserts, a driver can "stop, stand, or park" in the middle of a roadway, this interpretation would allow a driver to not only stand in the middle of a busy highway to pick up a pedestrian, but to also completely park or stop in the middle of a busy highway for no reason at all. This interpretation would produce "a result that is absurd," which would violate well-established rules of statutory interpretation. *See* Minn. Stat. § 645.17 (2012).

B. Striking the curb

In addition to violating 169.15 by impeding traffic, appellant violated sections 169.18 and 169.19. Section 169.18 provides, "Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway." Section 169.19, subdivision

1(a), provides that "a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway." "Roadway" is defined as "that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder." Minn. Stat. § 169.011, subd. 68. These statutes, therefore, prohibit driving onto the curb, which is an area not designed for vehicular travel. Appellant violated these statutes when his right rear tire bumped over the curb during his final turn.

Appellant argues that these statutes are inapplicable because he "*left the roadway* in order to park his car" and because he parked on the "shoulder," which is excluded from the definition of a "roadway" under section 169.011, subdivision 68. But appellant's parking behavior is irrelevant because he violated these statutes by striking the curb prior to his act of parking.

Appellant's statutory interpretation of the traffic laws is not persuasive. Because the district court correctly concluded that appellant violated section 169.15 by impeding traffic, and because we conclude that appellant also violated sections 169.18 and 169.19 by striking the curb, we hold that appellant's traffic stop was constitutional.[5]

Affirmed.

[5] Respondent also argues that the totality of the circumstances supported a reasonable inference of criminal activity. We decline to address this additional argument in light of our decision that reasonable suspicion exists based on appellant's violation of traffic laws.