State v. Birnstihl

2005 | Cited 0 times | Court of Appeals of Minnesota | April 5, 2005

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2004).

Affirmed

UNPUBLISHED OPINION

In this appeal from conviction of third-degree driving while impaired, Adam Birnstihl challenges the district court's denial of his pretrial suppression motion challenging the constitutionality of the police investigatory stop. Because the police had a reasonable, articulable suspicion that Birnstihl was engaged in illegal conduct, we affirm.

FACTS

At the contested omnibus hearing on Adam Birnstihl's suppression motion, a Carlton County sheriff's deputy testified that he became suspicious of Birnstihl's car when he saw it stationary on the roadway in Olsonville shortly after midnight. The deputy testified that the car's headlights were on, that there were no other cars traveling on the roadway in Olsonville at that time, and that he thought the car might be looking for an unoccupied house to burglarize.

The deputy turned his patrol car around to investigate. In the process of turning, he lost sight of Birnstihl's car but within two or three minutes he saw it return to the place where it had been stopped and then pull into a residential driveway. As Birnstihl and a passenger got out of the car, the deputy activated the emergency lights on his patrol car and approached Birnstihl. The deputy asked Birnstihl what was going on, and, when Birnstihl responded, the deputy noticed a strong odor of alcoholic beverage. The strong odor, together with Birnstihl's glassy and watery eyes, caused the deputy to believe that Birnstihl was intoxicated. The deputy administered field sobriety tests, a preliminary breath test, and an Intoxilizer test.

Based on the results of the Intoxilizer test, the state charged Birnstihl with two counts of gross-misdemeanor third-degree driving while impaired under Minn. Stat. § 169A.20, subd. 1 (2002) and Minn. Stat. § 169A.26, subd. 2 (2002). The district court denied Birnstihl's suppression motion and a subsequent request for reconsideration. The court found that the deputy had a constitutional basis to justify the stop and also an obligation to determine if the driver needed assistance.

Following this pretrial ruling, Birnstihl pleaded guilty to one of the two counts of third-degree driving while impaired under the procedure outlined in State v. Lothenbach, 296 N.W.2d 854, 857-58 (Minn. 1980), and the state dismissed the remaining count. Birnstihl appeals the pretrial ruling, arguing that the deputy's intrusion constituted a seizure that was not supported by an articulable suspicion of criminal activity.

DECISION

When a suppression order is challenged on appeal, we independently review the facts and the law to determine whether the district court erred in suppressing or refusing to suppress the evidence. State v. Harris, 590 N.W.2d 90, 98 (Minn. 1999). The legality of a limited investigatory detention turns on whether the police officer's act constitutes a seizure and, if so, whether the state is able to demonstrate an objectively reasonable, articulable suspicion for the seizure. Id.

The state, in its response brief, maintains that the deputy's approach and questioning of Birnstihl did not constitute a seizure because Birnstihl had already stopped his car. Under Minnesota law, a seizure occurs "when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." In re Welfare of E.D.J., 502 N.W.2d 779, 781 (Minn. 1993) (quoting Terry v. Ohio, 392 U.S. 1, 19 n.16, 88 S.Ct. 1868, 1879 n.16 (1968)). A seizure has occurred 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." State v. Cripps, 533 N.W.2d 388, 391 (Minn. 1995). The reasonable-person standard is an objective standard, ensuring that the scope of the constitutional protection does not vary with a specific person's subjective state of mind. Id.

A police officer's approach of a vehicle stopped at night on the shoulder of a highway does not in all circumstances equate to a seizure, even when the officer activates emergency lights. State v. Hanson, 504 N.W.2d 219, 220 (Minn. 1993). If the officer's motivation is to determine whether assistance is needed and the emergency lights are necessary to warn oncoming motorists, the encounter may not result in a seizure. Id. But encounters that restrain liberty through a show of authority or a significant intrusion on a person's freedom of movement are considered seizures. See, e.g., E.D.J., 502 N.W. 2d. at 780 (concluding seizure occurred when police pulled up behind defendant, who was on foot, and ordered him to stop when he began walking away from squad car); Klotz v. Comm'r of Pub. Safety, 437 N.W.2d 663, 665 (Minn. App. 1989) (determining seizure occurred when police pulled in behind car and requested identification from person who got out of car), review denied (Minn. May 24, 1989); State v. Sanger, 420 N.W.2d 241, 242 (Minn. App. 1988) (deciding seizure occurred when car under suspicion started backing up and officer in squad activated flashing red lights and beeped horn). See generally, 4 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 9.4(a), at 410-13 (4th ed. 2004) (explaining seizure occurs when reasonable person believes he is not free to leave, which includes circumstances where officer demands or compels action by suspect).

For three reasons, we reject the state's argument that the deputy's approach to Birnstihl did not constitute a seizure. First, when the deputy approached, the car did not objectively appear to need assistance. The deputy had followed the car as it entered a private driveway; the car had moved from the stationary position on the roadway. Second, the deputy activated his emergency lights after Birnstihl pulled into the driveway. The deputy testified that there were no other cars on the roadway, and he did not indicate that the emergency lights were needed for traffic or other reasons related to safety. Rather, the officer's conduct in activating the lights would reasonably appear to be a show of authority to detain Birnstihl and inquire about his conduct. Third, the deputy's inquiry, consistent with his omnibus testimony, was directed to the suspicious conduct, not to an offer of assistance. We conclude that the deputy's actions resulted in a seizure. We therefore address whether the deputy had an objective, individualized suspicion that Birnstihl was engaged in criminal activity. See Cripps, 533 N.W.2d at 392 (noting that next step in inquiry after determining seizure occurred is to examine basis of seizure). When reviewing the legality of a limited investigatory stop, we review questions of reasonable suspicion de novo. State v. Britton, 604 N.W.2d 84, 87 (Minn. 2000).

To justify a stop, an officer must be able to point to something objectively supporting a suspicion, rather than an unarticulated "hunch." Id. Reasonable suspicion requires that the stop be more than a "product of mere whim, caprice, or idle curiosity." Marben v. State Dep't of Pub. Safety, 294 N.W.2d 697, 699 (Minn. 1980) (quoting People v. Ingle, 330 N.E.2d 39, 44 (N.Y. 1975)). In determining whether the police had a valid basis for a stop, we examine the totality of the circumstances, giving due regard to an officer's training and experience in law enforcement. State v. Kvam, 336 N.W.2d 525, 528 (Minn. 1983). "[I]f the driver's conduct is such that the officer reasonably infers that the driver is deliberately trying to evade the officer and if, as a result, a reasonable police officer would suspect the driver of criminal activity, then the officer may stop the driver." State v. Johnson, 444 N.W.2d 824, 827 (Minn. 1989).

The deputy first saw Birnstihl's car shortly after midnight, with its lights illuminated, stationary on a public roadway, and with no other traffic in the surrounding area. When he turned his squad around to speak with the occupants, the car left the area and the deputy briefly lost sight of it. The deputy then checked a nearby storage area where there had been burglaries. Although the car was not at that site, within a couple of minutes, the deputy saw it slowly proceed back to its original location and then pull into a driveway. These circumstances, taken together, permitted the officer reasonably to infer, based on his training and experience, that the occupants of the car may have been engaged in criminal activity. His observations also permit a reasonable inference that Birnstihl was deliberately evading him, thereby supporting his suspicion that Birnstihl was involved in a criminal activity.

Birnstihl argues that, because the deputy lost sight of the vehicle briefly, he could not be sure that it was the same car he had seen a few minutes earlier. But the deputy testified that he was sure that it was the same car because there was only one way in and out of Olsonville and that, if it were not the same car, he would have seen the other car leaving the area. The deputy's belief is further supported by the car coming to a stop twice in the same place. Given the totality of the circumstances, we

conclude that the officer had sufficient, articulable suspicion that Birnstihl was engaged in illegal conduct to justify an investigatory stop.

Affirmed.