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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0596**

State of Minnesota,
Appellant,

vs.

Matthew William Vos,
Respondent.

**Filed November 18, 2019
Reversed and remanded
Jesson, Judge**

Rice County District Court
File No. 66-CR-18-2264

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John L. Fossum, Rice County Attorney, Terence Swihart, Assistant County Attorney,
Faribault, Minnesota (for appellant)

John A. Price III, John A. Price III, P.A., Lakeville, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

An officer responding to a report of a suspicious vehicle activated his emergency lights as he pulled in behind the car, which was parked along the side of a dark, deserted rural road with its lights off. The state argues that the district court erred by granting

respondent Matthew William Vos's motion to suppress evidence of impairment on the basis that Vos was unlawfully seized when the officer activated his emergency lights. We reverse and remand.

FACTS

On September 20, 2018, Officer Schleichert of the Lonsdale Police Department received a report of a suspicious vehicle parked on the side of the road at a rural intersection in Rice County at approximately 9:10 p.m. When Officer Schleichert arrived at the location, he saw a car parked on the side of the road, with its lights off, at an unlit intersection. Another officer was also present at the scene. The sky was completely dark. Officer Schleichert pulled in behind the parked car and activated his emergency lights.

Officer Schleichert approached the car and found respondent Matthew William Vos in the driver's seat. Vos was nonresponsive to the officer's questions and his eyes were bloodshot and watery. Officer Schleichert asked Vos to step out of the vehicle. When Vos failed to comply with that request, the officer opened the car door and escorted him out of the vehicle. The officer observed a liquor bottle on the floor between Vos's legs. The officer administered field-sobriety tests, which indicated that Vos was impaired. Vos was arrested after failing a preliminary breath test. After submitting to a breath test which showed that Vos had an alcohol concentration of 0.25, Vos was charged with two counts of second-degree driving while impaired (DWI).

Vos moved to suppress the evidence obtained as a result of the allegedly unlawful seizure and to dismiss the charges against him for lack of probable cause. The district court

granted Vos’s motion to suppress and dismissed all of the charges,¹ finding that Vos was illegally seized when Officer Schleichert activated his emergency lights because “Vos could not have reasonably concluded that he was at liberty to ignore the police presence and go about his business.”² This appeal follows.

D E C I S I O N

Because this is a pretrial prosecution appeal, we first determine whether the district court’s order suppressing the evidence and dismissing the charges for lack of probable cause had a critical impact on the outcome of the trial, before turning to the state’s assertion that the district court’s seizure analysis was erroneous. *See State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001) (“[A] reviewing court will reverse only if the state demonstrates clearly and unequivocally that the district court erred in its judgment and, unless reversed, the error will have a critical impact on the outcome of the trial.”), *review dismissed* (Minn. June 22, 2001); *see also* Minn. R. Crim. P. 28.04, subd. 2(2)(b). “Dismissal of a complaint based on a question of law satisfies the critical impact requirement.” *State v. Dunson*, 770 N.W.2d 546, 550 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009). Therefore, the district court’s pretrial dismissal of the complaint based upon the legal determination that Vos was unlawfully seized satisfies the appealability threshold.

¹ The order granting Vos’s motion to suppress also recites an additional DWI charge and an open-bottle charge, but an amended complaint is not contained in the record before this court.

² The district court quotes from *Kaupp v. Texas*, 538 U.S. 626, 629, 123 S. Ct. 1843, 1845 (2003).

Turning to the merits of the appeal, the state argues that the district court's determination that Vos was unlawfully seized when the officer activated his emergency lights was erroneous.³ "Seizure occurs when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (quotation omitted). Whether a seizure has occurred is analyzed from the objective perspective of the person alleged to have been seized.⁴ *Id.* ("Under the Minnesota Constitution, 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 [not] free to . . . terminate the encounter." (quotation omitted)). We review the district court's factual findings under a clearly erroneous standard, and the district court's legal determinations de novo when reviewing a pretrial suppression order. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

With this standard of review in mind, we address the circumstances of Vos's arrest. When Officer Schleichert pulled in behind Vos's car and activated his emergency lights, Vos was already parked along the side of the road. In general, it does not (in and of itself) constitute a seizure for an officer to simply walk up and talk to a driver sitting in an already stopped car. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980). Therefore, the

³ The district court's order granting Vos's motion to suppress was limited to the finding that Vos was seized when the officer activated his emergency lights, and thus did not address any alternative instances of seizure that may have occurred.

⁴ We note that Officer Schleichert testified that he felt that Vos was not free to leave once he activated his emergency lights, but because seizure is analyzed from the objective perspective of the person seized, this testimony is not relevant to our analysis.

question before us is whether the activation of the officer's emergency lights transformed the interaction into a seizure.

The Minnesota Supreme Court addressed this very question in *State v. Hanson*, 504 N.W.2d 219 (Minn. 1993). There the court declined to hold that a police officer's use of their emergency lights when parked behind an already stopped car is per se a seizure, and instead adopted a fact-specific approach. *Id.* at 220. The supreme court noted that "[i]t 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," but declined to find so where "[i]t was dark out and the cars were on the shoulder of the highway far from any town." *Id.* Under the circumstances of the encounter in *Hanson*, the supreme court determined that a reasonable person would know that the emergency lights were used to alert oncoming motorists to be careful due to the officer's presence along the shoulder of a dark road at night. *Id.*

The facts of *Hanson* are strikingly similar to those before us. Officer Schleichert activated his emergency lights while parked along the side of a completely-dark rural road at night, and made no other show of authority until after his attempt to see if Vos was in need of assistance. While Vos urges this court to determine that in these circumstances a reasonable person in Vos's shoes would not have felt free to leave, the supreme court already made that assessment to the contrary. It is not for us to second guess the *Hanson* court here.

Still, Vos argues that *State v. Lopez*, 698 N.W.2d 18 (Minn. App. 2005) should lead us to conclude that Officer Schleichert's use of his emergency lights constituted a seizure.

Lopez is distinguishable. In *Lopez*, an officer responding to a report of a suspicious person in a car parked in a department store parking lot activated her emergency lights before entering the parking lot, and partially blocked the suspicious vehicle with her squad car. 698 N.W.2d at 20-21. This court distinguished *Hanson* and held that the officer's actions constituted a seizure because the officer "activated the squad car's lights and pulled into a parking lot, and not a busy highway, where she did not need to warn oncoming traffic[.]" and on the basis that "the officer also partially blocked forward movement of appellant's vehicle, pounded on the driver's window, and opened the driver's door." *Id.* at 22.

Unlike in *Lopez*, Officer Schleichert did not block Vos's vehicle and the interaction took place along the side of a dark, rural road at night, not in a parking lot. Further, Officer Schleichert made no other show of authority until after attempting to engage Vos in conversation to see if he was in need of assistance, which is a necessary component of an officer's duties. See *Kozak v. Comm'r of Pub. Safety*, 359 N.W.2d 625, 628 (Minn. App. 1984) ("In the proper performance of his duties, 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."). Therefore, the district court erred in determining that Vos was unlawfully seized when the officer pulled in behind Vos's already parked car and activated his emergency lights. Further findings are therefore necessary to determine when Vos was seized and, if so, whether it was based upon reasonable suspicion.

Reversed and remanded.