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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1705**

State of Minnesota,
Respondent,

vs.

Douglas Bert Melby, III,
Appellant.

**Filed September 8, 2020
Affirmed
Reilly, Judge**

Crow Wing County District Court
File No. 18-CR-18-2823

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

Donald F. Ryan, Crow Wing County Attorney, Stephanie Shook, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Kate M. Baxter-Kauf, Stephen M. Owen, Special Assistant Public Defenders, Lockridge Grindal Nauen P.L.L.P., Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges his conviction for third-degree possession of a controlled substance, arguing that the district court erred by denying his motion to suppress the evidence because his seizure by the police was not supported by reasonable suspicion that he was engaged in criminal activity. We affirm.

FACTS

Shortly after 7:00 p.m. on July 10, 2018, a Crow Wing County deputy was on patrol when he noticed a vehicle parked off the road in front of a closed gate. Two people were standing outside the vehicle. The deputy turned his squad car around and parked near the vehicle. At a contested omnibus hearing, the deputy testified that he stopped to determine whether the two people needed any assistance.

When the deputy arrived, the front of the vehicle was facing away from the closed gate towards the deputy's squad car and the driver's door was open. The deputy saw one of the people, appellant Douglas Melby, behind the open driver's door. The other person, a woman, stood beside Melby, but not behind the vehicle door. As the deputy approached in his squad car, Melby "immediately crouched down below the door" of the vehicle. The deputy then stepped out of his squad car and told Melby to stand up and put his hands in the air, but Melby did not do so. At that time, the deputy saw Melby "fidgeting around" and "could see his shoulders moving around." Based on those movements, the deputy suspected that Melby's hands were moving as well. He testified that he believed Melby may have been "hiding something" or "doing something illegal," and that he was

concerned Melby had a weapon. The deputy again ordered Melby to stand up, pulled out his gun, and pointed it at Melby. Melby stood up, and the deputy placed his gun back in its holster. Melby was holding a screwdriver in one hand and a rag in the other.¹

The deputy directed Melby to step away from the open vehicle door, and he then spoke with Melby and the woman. The woman stated that they were at that location because they had received permission from the property owner to collect rocks there for a landscaping project. At one point during the conversation, the deputy stepped in front of the open vehicle door and peered into the vehicle. He saw a white, crystalline substance about the size of a baseball located on the floorboard inside the driver's door, which he believed was methamphetamine. As a result, the deputy arrested Melby. After being sent to the Minnesota Bureau of Criminal Apprehension, the white substance tested positive for methamphetamine.

Respondent State of Minnesota charged Melby with third-degree possession of a controlled substance. Melby moved to suppress the evidence obtained by the deputy, arguing that the evidence was the product of an illegal seizure. After a contested omnibus hearing, the district court denied Melby's motion to suppress, reasoning that the deputy's seizure of Melby was supported by reasonable suspicion. Melby agreed to a stipulated-evidence trial under Minn. R. Crim. P. 26.01, subd. 3. In April 2019, the district court

¹ Although there is a squad car video, the camera did not begin to record until after Melby complied with the deputy's demands. The deputy testified that the camera did not activate automatically because he did not turn on his emergency lights or sirens, since he initially believed that he merely would be assisting the individuals. As a result, the deputy did not activate his recorder and camera until after his initial interaction with Melby.

issued an order finding Melby guilty of third-degree possession of a controlled substance. The district court sentenced Melby to 51 months' imprisonment. Melby appeals.

DECISION

When reviewing a pretrial order on a motion to suppress evidence, we review the district court's factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). Both the United States and Minnesota Constitutions protect "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. A seizure occurs when a police officer, "by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S. Ct. 1868, 1879 n.16 (1968).

A police officer may "stop and temporarily seize a person to investigate that person for criminal wrongdoing if the officer reasonably suspects that person of criminal activity." *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (quotation omitted). "Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate . . . that he or she had a particularized and objective basis for suspecting the seized person of criminal activity." *Id.* at 842-43 (quotations omitted). The reasonable-suspicion standard is not high, *id.* at 843, but it requires more than an unarticulated hunch, *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). We consider the totality of the circumstances when determining whether reasonable suspicion existed. *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998). Any evidence obtained from a seizure unsupported by reasonable suspicion must be suppressed. *Diede*, 795 N.W.2d at 842.

Melby challenges the deputy's seizure of him, which occurred when the deputy ordered Melby to stand up and put his hands in the air after Melby crouched behind the open vehicle door.² Reasonable suspicion that a person is engaged in criminal activity may arise based on the person's furtive movements or evasive conduct in the presence of police. For example, officers had reasonable suspicion that a defendant was either engaged in illegal activity or armed and dangerous when, after they activated their emergency lights to stop the defendant's vehicle, they saw the defendant continually lean to each side of the vehicle for a couple of seconds and shift his position in his seat, with the movements lasting for about 45 seconds. *State v. Flowers*, 734 N.W.2d 239, 243, 252 (Minn. 2007). And officers had reasonable suspicion that a defendant was armed and dangerous when, among other things, he made a "furtive movement" by reaching toward his vehicle's passenger compartment after the officers activated their emergency lights, and later reached all over his body and jacket pockets when asked to locate his driver's license. *State v. Richmond*, 602 N.W.2d 647, 650-51 (Minn. App. 1999), *review denied* (Minn. Jan. 18, 2000). As a

² In his pro se supplemental brief, Melby argues that he was seized as soon as the deputy pulled up in his squad car because the deputy blocked Melby's vehicle from leaving. A person is seized when "in view of all of 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). A seizure does not occur when an officer approaches a legally parked vehicle to determine whether the occupants need assistance. *Paulson v. Comm'r of Pub. Safety*, 384 N.W.2d 244, 245-46 (Minn. App. 1986). Furthermore, the deputy did not turn on the squad car's emergency lights or siren, and the squad car video shows that the squad car was not blocking Melby's vehicle. Based on those circumstances, a reasonable person would have felt free to terminate the encounter when the deputy first arrived.

result, a person's furtive movements in response to police presence can create reasonable suspicion that the person is engaged in criminal activity or is reaching for a weapon.

As for a person's evasive conduct, reasonable suspicion supported a stop when, among other things, the defendant suddenly changed the direction he was walking after he saw the police. *State v. Dickerson*, 481 N.W.2d 840, 842-43 (Minn. 1992), *aff'd sub nom. Minnesota v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130 (1993). And a temporary seizure was justified when three people, upon spotting police officers at an airport, furtively encouraged each other to move away from the police. *Florida v. Rodriguez*, 469 U.S. 1, 6, 105 S. Ct. 308, 311 (1984).

Here, based on the totality of the circumstances, the deputy had reasonable suspicion to seize Melby because of Melby's furtive movements and evasive conduct. Melby had been standing outside his vehicle, parked off the road, in front of a closed gate. When the deputy approached in his squad car, Melby immediately crouched behind the open door of his vehicle. That action led to the reasonable inference that Melby was trying to evade the police. After that, Melby began to make furtive movements behind his vehicle door. The deputy could see Melby's shoulders moving, making the deputy suspect that Melby was doing something with his hands behind the vehicle door, such as hiding something illegal or reaching for a weapon. That suspicion was reasonable because Melby took those actions in response to seeing the deputy approach, and so the deputy had more than an unarticulated hunch that Melby was engaged in criminal activity.

In sum, the deputy had reasonable suspicion to seize Melby because Melby's actions upon observing the deputy approach provided the deputy with an objective and particularized basis for believing that Melby was engaged in criminal activity.

Affirmed.