STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1551

State of Minnesota,
Respondent,

vs.

Jason Randolph Christianson,
Appellant.

Filed June 6, 2022
Affirmed
Bryan, Judge

Becker County District Court
File No. 03-CR-19-2334

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

Charles Ramstad, Detroit Lakes City Attorney, Karen Skoyles, Assistant City Attorney, Ramstad, Skoyles & Winters, P.A., Detroit Lakes, Minnesota (for respondent)

Luke T. Heck, Drew J. Hushka, Vogel Law Firm, Fargo, North Dakota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Jesson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal from his conviction, appellant challenges the district court's denial of his pretrial motions to dismiss and suppress evidence, arguing that police lacked reasonable suspicion of wrongdoing when appellant was seized and that police violated his

right to the limited assistance of counsel when deciding whether to submit to a breath test. We affirm the district court's denial of appellant's pretrial motions because we conclude that there was reasonable and articulable suspicion when law enforcement began an investigatory seizure and because appellant's right to counsel was vindicated.

FACTS

Respondent State of Minnesota charged appellant Jason Randolph Christianson with three misdemeanor counts of driving while impaired (DWI). Among other motions, Christianson moved to dismiss the charges and to suppress evidence obtained as a result of an unlawful investigatory seizure. Christianson also moved to suppress the results of a chemical breath test. After a contested evidentiary hearing, the district court denied Christianson's motions. The parties proceeded by stipulation pursuant to Minnesota Rule of Criminal Procedure 26.01 to obtain appellate review of the district court's decisions. The district court found Christianson guilty of DWI in violation of Minnesota Statutes section 169A.20, subdivision 1(5) (2018).

Christianson appeals the convictions and challenges the pretrial rulings. Given the issues raised on appeal, we first address the facts regarding the investigative seizure of Christianson and then proceed to discuss the facts concerning the vindication of Christianson's right to counsel prior to submitting to a chemical breath test. The parties do not contest the following facts.

A. Investigative Seizure

On October 30, 2019, at 9:22 p.m., law enforcement officers were dispatched to a private business in Detroit Lakes based on the activation of a warehouse burglary alarm. Minnesota State Patrol Trooper Matthew Holden was the first law enforcement officer to arrive. Approximately ten seconds lapsed from the moment that Holden drove into the driveway leading to the parking lot until he arrived at the front of the warehouse. During this time, the video recording from the dash camera shows the warehouse as Holden drove into the parking lot. It is difficult to discern whether Holden illuminated a spotlight, activated the emergency lights on his patrol car, or both, and Holden did not testify regarding this. It is clear, however, that prior to illuminating the warehouse, Holden was able to observe the following: the warehouse building had no inside or outside lights on, a garage door of the warehouse was open, the warehouse burglary alarm was activated, an SUV was parked in front of the open garage door, the engine of the SUV was running, the rear door of the SUV was open, and a man was walking out of the open garage door of the warehouse.

The video recording from the dash camera shows a man walking empty-handed from the open garage door towards the SUV. There are no visible broken windows, and as the warehouse is illuminated, Holden says that "there's a vehicle here . . . a worker maybe." The man, later identified as Christianson, raised his hands as he saw the patrol car approach. Holden got out of the vehicle and the men walked towards each other. Holden greeted Christianson and asked, "Do you work here?" Christianson confirmed that he worked there and explained that he had set off the alarm, there was no broken glass, and

that he knew how to turn off the alarm. Holden came to the conclusion that it was probably a false alarm. During their encounter, as Christianson spoke to Holden, Holden "could smell an odor of an alcoholic beverage coming from [Christianson]" and observed bloodshot and watery eyes. During the next few minutes, Christianson struggled to turn off the alarm but managed to do so after contacting his employer. Christianson also admitted to consuming alcohol before driving and submitted to field sobriety tests but refused to submit to a preliminary breath test. Holden placed Christianson under arrest for driving under the influence of alcohol and transported Christianson to the Becker County jail.

B. Attorney Consultation

Holden read the Minnesota breath test advisory to Christianson at 9:47 p.m. Christianson invoked his limited right to consult an attorney, and Holden provided Christianson with a phonebook and Christianson's cell phone. Christianson's first two calls were to his father and were unsuccessful. At 9:51 p.m., Christianson called an attorney from the phonebook, but he did not actually speak with an attorney. Holden then asked Christianson if he planned to try to contact someone else, and Christianson responded that he was still trying to reach someone.

At 9:53 p.m., Christianson tried to contact his father again but was unsuccessful. Christianson then called his stepmother and spoke with her about his attempts to contact his father for information about an attorney. The call with his stepmother ended at 9:57 p.m. For a short time, Christianson did not make any attempts to contact anyone or use the phone. Holden informed Christianson that he needed to be making calls and using

the phonebook to contact an attorney. Holden also explained that the phonebook contained contact information for Becker County attorneys available to answer calls 24 hours a day.

Christianson then placed two more calls to his father at 10:03 p.m. and another call to his stepmother at 10:04 p.m. At 10:05 p.m., Christianson successfully contacted his father, who agreed to help Christianson contact an attorney. Another brief period of time passed, during which Christianson did not attempt to contact anyone or use the phone. After waiting for a few minutes, Holden informed Christianson that he would only have a couple more minutes to contact an attorney. Christianson apologized and explained that he had contacted his father. Then, Christianson engaged Holden in a conversation about his training, education, and familiarity with the Detroit Lakes area. At 10:12 p.m., Holden terminated Christianson's attorney time and asked him if he would submit to a breath test. Christianson agreed to submit to a breath test and the results indicated that Christianson's blood alcohol content exceeded the legal limit.

DECISION

I. Reasonable Suspicion to Support the Investigatory Seizure

Christianson argues that Holden did not have a reasonable, articulable suspicion of criminal activity when they conducted an investigatory seizure.[1] We are not convinced and conclude that the totality of the circumstances supported the investigatory seizure.

[1] Christianson only challenges the basis for the initial encounter and concedes that once Holden began speaking with Christianson, Holden had a sufficient basis to expand the investigation to include driving under the influence.

The United States and Minnesota Constitutions guarantee the "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. As a general rule, a law enforcement officer may temporarily detain a person for investigatory purposes if the officer has a reasonable, articulable suspicion that the person has engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 19-22 (1968); *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011). For an investigatory seizure to be supported by reasonable suspicion, there must be "specific, articulable facts" showing that the officer "had a particularized and objective basis for suspecting the seized person of criminal activity." *Diede*, 795 N.W.2d at 842-43 (quotations omitted). This court considers the totality of the circumstances when determining whether police had reasonable suspicion. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). The standard for reasonable suspicion is "not high," but it requires more than "an inchoate and unparticularized suspicion or hunch." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotations omitted); *State v. Harris*, 590 N.W.2d 90, 99 (Minn. 1999) (an officer "may draw inferences and deductions that might elude an untrained person"). "[W]holly lawful conduct might justify the suspicion that criminal activity is afoot." *Britton*, 604 N.W.2d at 89 (citation omitted). Evidence obtained as a result of an unlawful investigatory seizure must be suppressed. *Diede*, 795 N.W.2d at 842. We review de novo the "determination that the police articulated a reasonable suspicion of criminal activity warranting the governmental intrusions in question." *Id.* at 843.

Christianson argues that Holden lacked a sufficient basis to conduct an investigatory seizure because of the following three circumstances: (1) Holden did not personally see

any broken windows as he drove to the front of the warehouse; (2) Holden thought Christianson might be an employee of the business; and (3) Christianson was not carrying any items as he walked towards the SUV.[2] After careful review of the record, we conclude that the investigatory seizure was supported by reasonable, articulable suspicion.

Holden was dispatched to the warehouse to investigate a burglary alarm that was triggered after dark and after normal business hours. Prior to activating the emergency lights (or a spotlight) on his patrol car, Holden was able to see that the warehouse garage door was open, and a man was walking out of the warehouse toward a parked SUV. Holden testified that he also observed two large items on the ground behind the SUV, the rear door of the SUV was open, and the engine of the SUV was running. No other persons or vehicles could be seen as Holden pulled into the driveway, and all the internal and external lights of the warehouse were off. Although Holden did not observe any broken windows, the garage door of the warehouse was open and from Holden's vantage point, he would not be able to view any windows along the back or sides of the warehouse. Likewise, the possibility that the person walking from the open garage door to the SUV might be a warehouse employee is not inconsistent with criminal activity, such as burglary or

[2] Portions of Christianson's brief appear to argue that after Holden pulled into the driveway leading to the parking lot, but before illuminating the warehouse, Holden conducted an intervening investigation, which dispelled whatever reasonable suspicion may have existed before Holden activated the emergency lights on his patrol car. We do not adopt this framework, however, because the video shows that Holden illuminated the warehouse within seconds of pulling into the driveway. Instead, we analyze whether there was sufficient reasonable suspicion at the time Holden illuminated the warehouse, taking into account the information obtained during the seconds that lapsed from the moment that Holden pulled into the driveway until he illuminated the warehouse.

vandalism. Given the totality of these circumstances, Holden had a reasonable, articulable suspicion that criminal activity was afoot at the time that he activated his emergency lights and initiated the investigatory seizure, and we affirm the denial of Christianson's motions to dismiss and to suppress evidence.

II. Vindication of Christianson's Right to Consult an Attorney

Christianson also argues that law enforcement violated his right to consult with an attorney. Again, we are not convinced and conclude that Christianson's right to contact an attorney was vindicated.

A driver arrested for a DWI has a limited right to counsel when deciding whether to submit to a breath test. *Friedman v. Comm'r of Pub. Safety*, 473 N.W.2d 828, 835 (Minn. 1991). To vindicate this right, law enforcement must, at a minimum, provide the driver with access to a telephone "and give [] a reasonable time to contact and talk with counsel." *Id.* (citation omitted). A reasonable amount of time "is not a fixed amount of time, and it cannot be based on elapsed minutes alone." *Mell v. Comm'r of Pub. Safety*, 757 N.W.2d 702, 713 (Minn. App. 2008) (citing *Kuhn v. Comm'r of Pub. Safety*, 488 N.W.2d 838, 842 (Minn. App. 1992), *rev. denied* (Minn. Oct. 20, 1992)). We "must balance the efforts made by the driver against the efforts made by the officer . . . [the] focus is both on the police officer's duties in vindicating the right to counsel and the defendant's diligent exercise of the right." *Id.* (quoting *Kuhn*, 488 N.W.2d at 842).

Courts also consider the totality of the circumstances, such as the time of day, how long the driver has been under arrest, and whether the driver made a good-faith and sincere effort to contact counsel. *Kuhn*, 488 N.W.2d at 842-43; *Parsons v. Comm'r of Pub. Safety*,

488 N.W.2d 500, 502 (Minn. App. 1992). Generally, defendants are allowed to await return calls, but they are not given an indefinite amount of time to do so. *Palme v. Comm'r of Pub. Safety*, 541 N.W.2d 340, 345 (Minn. App. 1995), *rev. denied* (Minn. Feb. 27, 1996). If the defendant refuses to contact more than a single attorney or has given up on trying to contact an attorney, law enforcement officers need not wait any longer. *Kuhn*, 488 N.W.2d at 842; *see also Gergen v. Comm'r of Pub. Safety*, 548 N.W.2d 307, 310 (Minn. App. 1996) (holding that driver did not make a good-faith effort to contact an attorney and officer vindicated driver's limited right to counsel), *rev. denied* (Minn. Aug. 6, 1996); *Palme*, 541 N.W.2d at 345 (determining that 29 minutes was reasonable given defendant's inaction). Whether an officer has vindicated a driver's right to counsel presents a mixed question of law and fact. *Mell*, 757 N.W.2d at 712. When the facts are not in dispute, this court reviews de novo whether an individual's right to counsel was violated. *Id.*

Christianson argues that we should reverse as we did in *Davis v. Commissioner of Public Safety*, 509 N.W.2d 380 (Minn. App. 2000). In that case, after unsuccessfully attempting to reach an attorney using the phonebook, she called her friend, a paralegal, who agreed to contact an attorney on the defendant's behalf. *Id.* at 385. When the law enforcement officer advised the defendant that she needed to decide whether to submit to the breath test, the defendant requested additional time to call her friend. *Id.* When she attempted to contact her friend, the line was busy. *Id.* The law enforcement officer terminated the defendant's time to consult with an attorney, and the defendant refused to submit to a breath test. *Id.* This court held that law enforcement failed to afford the defendant a reasonable amount of time to contact an attorney. *Id.* at 385-86.

While we recognize some similarities, we conclude that the facts of this case differ significantly from those in *Davis*. For instance, during the 24 minutes that Christianson had to contact an attorney, Holden reminded and encouraged Christianson to use the phonebook at least three times. Apart from his initial call, Christianson ignored Holden's directions and chose not to use the phonebook or call any of the listed attorneys. In addition, Christianson did not request additional time, as the defendant in *Davis* did. Perhaps most importantly, the defendant in *Davis* received a busy signal when she attempted to return her friend's call. *Davis*, 509 N.W.2d at 385. This suggests that both the defendant and her friend were actively using the telephone when the law enforcement officer concluded her consultation time. By contrast, Christianson was not actively trying to contact an attorney, his father, or his stepmother when Holden concluded Christianson's consultation time. Instead, after Holden advised him to use the phone for the third time, Christianson engaged in small talk and did not attempt to call anyone. Finally, although the length of time is not, by itself, determinative, *id.* at 386, we observe that Christianson received more time to contact an attorney than did the defendant in *Davis*.

Given all of these circumstances, it was reasonable for Holden to terminate the consultation time. *See Gergen*, 548 N.W.2d at 310; *Palme*, 541 N.W.2d at 345; *Parsons*, 488 N.W.2d at 502. Therefore, Holden vindicated Christianson's limited right to counsel, and we affirm the district court's denial of Christianson's motion to suppress the results of the chemical breath test.

Affirmed.